HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

Standing Committee on Procedure and House Affairs

PROC • NUMBER 109 • 1st SESSION • 42nd PARLIAMENT

EVIDENCE

Monday, June 4, 2018

Chair

The Honourable Larry Bagnell

Standing Committee on Procedure and House Affairs

Monday, June 4, 2018

● (1005)

[*English*]

The Chair (Hon. Larry Bagnell (Yukon, Lib.)): Good morning. Welcome to the 109th meeting of the Standing Committee on Procedure and House Affairs.

Today, as we continue our study of Bill C-76, an act to amend the Canada Elections Act and other acts and to make certain consequential amendments, we are pleased to be joined by Marc Mayrand, the former chief electoral officer.

Thank you for being here, Mr. Mayrand. We had you here at the beginning of our study on this, and it's great to have you back. I hope you're enjoying retirement.

Mr. Marc Mayrand (Former Chief Electoral Officer, As an Individual): You bet.

The Chair: This should be a fun event for you. We look forward to your comments today. I'm sure they'll be very helpful.

[*Translation*]

Mr. Marc Mayrand: Thank you, Mr. Chair.

I am pleased to be here—

The Chair: One moment, please.

[*English*]

Do you have a point of order, Mr. Bittle?

Mr. Chris Bittle (St. Catharines, Lib.): I have just a quick point of committee business. I know that we might have five hours of votes lined up tonight, so I was wondering if the witnesses for this afternoon could be notified and perhaps rescheduled for later on in the week, rather than having them sit around for hours.

The Chair: Are there any comments?

Mr. Blake Richards (Banff—Airdrie, CPC): Obviously it would be nice to hear from the witnesses. If in fact we'll be cutting through their time, it would only make sense that we would schedule them for another time.

The Chair: If that unfolds, we will reschedule.

I'm sorry, Mr. Mayrand.

[*Translation*]

Let's go.

Mr. Marc Mayrand: Thank you, Mr. Chair.

I am really happy to be before this committee, which has been part of my professional life for close to 10 years. I am here today as an individual, so any views or comments that I may make as part of this appearance are my personal views only and do not represent the views of Elections Canada.

In my opinion, Bill C-76 manages to significantly modernize services to electors. It makes the electoral system more accessible and inclusive, and it improves the fairness of our system.

[*English*]

You will not be surprised that, consequently, I very much endorse the proposed legislation. Bill C-76 was informed by the feedback of electors, the experience of the 2015 election, and the experience of field officials, candidates, parties, which fed into my recommendations report of 2016, which was itself reviewed and the object of three reports by this committee. My point here is that much in the bill has already been extensively studied and generally endorsed by this committee.

I have heard there are new issues—issues that have emerged or become more acute since the various studies. The third party regime has become seen as overly exposed to foreign influence, as well as being somewhat unfair in the context of fixed-date elections. Foreign influence or interference in national elections in some countries suggests that Canada needs to be proactive. Social media and technology bring great value to public discourse and civic engagement, but as you all know, we are increasingly finding that they can be used to disinform and manipulate opinion and undermine confidence in our institutions.

There are a few key areas that I would like to stress for the committee today. The first one is the privacy regime. Bill C-76 proposes to establish a requirement for political parties to set and maintain a privacy policy as a prerequisite of their registration. It's a good but very small step, given our context. It fails to set clear standards that would be consistent with universal principles of privacy protection. It lacks independent oversight and an effective compliance mechanism.

A possible approach would be to set out clearly that parties must adhere to PIPEDA principles; provide an independent review, either by the Privacy Commissioner or an independent auditor; and provide for appropriate remedies for failing to adhere to the principles.

The third party regime also sees significant and very substantial, probably the most substantial, reform that is contained in Bill C-76. It expands the regime to include not only advertising but also partisan activities as well as election survey expenses, setting a limit of $350,000 during the writ period and $700,000 during the pre-writ period, excluding, in that case, issue advertising. It does require three reports to be filed by a third party. I'm not sure why this is needed. It seems to be a lot more than is required from candidates or any other participants in the electoral process. They must maintain a separate bank account to pay for their expenses. They are prohibited from using foreign funds and are subject to anti-collusion provisions to circumvent spending limits. Their returns must be audited, and the auditor must certify that no foreign funds were used.

What Bill C-76 does not do is put an effective restriction on the commingling of funds. Foreign money may be laundered through various Canadian entities to make it look Canadian—that's also an issue, to my mind. There's no limit on the source or amount of contributions except that they cannot be from foreign entities, of course.

● (1010)

A possible approach to addressing those concerns would be difficult to conceive in the context of Bill C-76. Designing a new system would require that we set up a system of contributions analogous to what exists for other political entities, yet it would be fraught by challenges in meeting the test of the charter. With the time being what it is, I am not sure this can be done effectively, but who knows? I am sharing that with the committee.

Foreign influence is another issue that is being addressed by Bill C-76, which does prohibit contributions by foreigners. Foreign third parties are forbidden to spend on advertising or partisan activities, including election surveys, during the pre-writ and writ periods. It prohibits the sale of electoral advertising to foreigners, and many of the new generic provisions would, of course, apply to foreigners.

What Bill C-76 does not do is prevent the circumvention of the prohibitions, especially relating to the flow of funds to Canadian entities. A possible approach here would be making sure that a solid anti-collusion provision is added to the act. Beyond that, we would need to look, I believe, at a coordinated international approach to limit the interference and prevent the interference of foreigners in national elections.

The last emerging issue I want to raise with this committee today is the one regarding social media platforms and technology. In my view, Bill C-76 does little regarding the abuses in this area, possibly because issues are much larger than electoral matters and may be better handled through other legislation. Also, it is a truly emerging issue that few countries have successfully regulated today. It is compounded by the fact that social media and technology have no frontiers. It adds to the challenge of regulating those activities.

Bill C-76 does not prevent disinformation, propaganda, or artificial promotion of pseudo-info through trolls and bots. Maybe that's something this committee should consider, or at least provide clarity in this regard. A possible approach would be to create a repository of all digital advertising related to an election. Make sure that platform owners are accountable for illegal use of their platforms, and—to my mind quite important—task an organization to undertake public education on how to assess the reliability of information that you see on the web or on various platforms. I think the more Canadians are aware of the issue and the traps of misinformation, the better they are at recognizing it and the better they are at exercising their judgment during the election.

Finally, I have a few other considerations. They're maybe not of significant importance, but I would like to raise them for the attention of the committee.

The first one is vouching. Bill C-76 does reintroduce vouching in our electoral system. Personally, I would have liked to see it extended to staff in seniors homes and long-term care facilities. I am struck by the Etobicoke case where a nurse, serving electors in a long-term care facility, out of her goodwill simply vouched for the electors who were present there and who had insufficient or inadequate ID or documentation. When the case proceeded before the court, all the judges who looked at it—the case went up to the Supreme Court—found that there was no leeway there. Since the nurse did not reside in the same polling division as the residents in the long-term care facilities, the ballots were void, yet there was no question about the eligibility of those electors.

I put that on the table for your consideration. I think the risks in those confined, closed residential establishments are very limited in terms of possible fraud. All the people can be tracked easily. The worst thing is that Elections Canada visits those long-term care facilities to establish who resides there during the election. It's unbelievable that two weeks later, we can't recognize those people. I leave that for your consideration.

● (1015)

The other issue that I'm not sure was an oversight but I thought was concurred in by this committee was the provision of a subsidy to candidates' official agents. I think quality official agents are difficult to find and difficult to retain. They bear the crux of the burden imposed by the act in terms of reporting and tracking expenses, and I feel very strongly that these people—who devote an exceptional number of hours, these days mostly as volunteers, for well beyond 36 days and in fact, sometimes off and on for a year easily—would greatly benefit from a small compensation for the service they provide, because they make such a contribution to you as candidates but also to the integrity of our system. Again, I thought this matter had been agreed to in committee. I proposed it in 2016, and I'm bringing it back again today as I have this occasion.

I know also that there is nothing in the bill on the leaders debate. My only point here is not suggesting it should be part of this bill at this point, but certainly time is pressing to address the issue if we are to have any independent framework set up for 2019.

In closing, the points that I made earlier this morning should not be seen as undermining the importance of Bill C-76, which is a sound piece of legislation that is squarely anchored in the core values underpinning free and fair elections. Like any draft legislation, it is susceptible to improvement through the work of parliamentarians. I hope, however, that the best does not become the enemy of the good, as we say, in the quest for improvement.

Thank you, Mr. Chair.

I will be happy to take questions.

[*Translation*]

The Chair: Thank you very much, Mr. Mayrand.

Mr. Simms, you may go ahead.

[*English*]

Mr. Scott Simms (Coast of Bays—Central—Notre Dame, Lib.): Mr. Mayrand, it's good to see you again, sir. It's always a pleasure. I always enjoyed your testimony back then, as today.

I have a quick question about the last thing you said, because it's on my mind, and I remember you saying this about the official agent. Are you proposing having something similar to what we do with the auditors, which is the receiver general in the sense—

Mr. Marc Mayrand: Yes. It would be the same model as the subsidy that's available to the auditors. The amount remains to be determined by the committee, and may vary depending on the type of work or the types of returns.

Mr. Scott Simms: Okay, I just wanted to clarify that.

I want to go back to the beginning. When I say "beginning", I want to go back to when we first met, which was a discourse you and I had about the Fair Elections Act some time ago. You used the term "meeting the test of the charter", and we were quite fearful at the time that, in many cases, changes being made in the Fair Elections Act would mean that a lot of people out there would be in a vulnerable state when it came to voting, with things like the voter information card and so on and so forth.

What was so particularly egregious to you? What was the one part that caused you the most concern when the Fair Elections Act was put in place?

● (1020)

Mr. Marc Mayrand: I think I expressed it quite loudly at the time. My concern was that it was depriving legitimate electors of their right to vote without sufficient rationale to justify it.

Mr. Scott Simms: I remember that clearly, and I'm glad you said that, because the rationale seemed to be missing at the time. The phrase we used at the time was "why are we creating a solution for a problem that does not exist?"

That being said, voter fraud has come up quite a bit not just in Canada but in the North American context as well. What would your opinion be about voter fraud in this country? Is it getting worse? Does it exist? Is it a problem? What should we do about it?

Mr. Marc Mayrand: There is very little evidence—in fact, no evidence—of any systemic abuse or fraudulent voting in our system. As far as I know, that's true at the federal and provincial levels. There has been much discussion in the U.S. since the last election. Also there has been a substantive lack of evidence to support any allegation of systemic fraud.

There were a few cases, and Elections Canada had controls in place before, during, and after the election to validate any potentially doubtful votes. Again, these cases rarely reflect fraudulent activity, and when they do, they are referred to the commissioner, and after investigation, rarely bring about any charges.

Mr. Scott Simms: Thank you, sir.

The other part of it is that you've mentioned vouching and the reintroduction at this level of vouching. Notwithstanding the point you made about the nursing homes, however, which I thought was a good point, vouching is certainly something that some people would look at suspiciously. Some people would look at this and say that it's a place where abuse could run rampant. You disagree.

Mr. Marc Mayrand: First of all, it's rarely used. At the end of the day, it's a safety valve for those who are in extreme conditions and could not establish properly their identification or their qualifications as electors. Secondly, it's done very publicly and openly in front of officials, who take detailed records of the proceedings there so they can be checked afterwards if need be. It's also done in the presence of observers from candidates, who can challenge and certainly bring matters to the attention of Elections Canada if they have concerns about the legitimacy of the procedure that has taken place.

Again, I'm not sure that the risks there, which to me are minimal—truly minimal—warrant denying a legitimate elector to cast a ballot. That's another charter issue.

Mr. Scott Simms: Thank you.

You also brought up—and passionately as well—the influence of foreign money and how this bill is a step in the right direction. You feel that more work should be done in this regard. Obviously, you've pointed out ways in which this is very difficult to keep track of, and one of the things you said was about solid provisions for "anti-collusion". Were you talking about the foreign money aspect when you said that?

Mr. Marc Mayrand: In the bill, there's an anti-collusion provision regarding spending limits, but there's nothing regarding the flow of money. My concern is that money can be laundered, in a way, to give it a Canadian colour. At the end of the day, you don't know if it's truly Canadian money or if it's the original foreign funds. I'm saying that there should be a provision that clearly prohibits doing indirectly what you cannot do directly. I think it would help the commissioner in the cases where the matter may arise.

● (1025)

Mr. Scott Simms: Very quickly, on social media, you mentioned tasking an organization for the reliability of social media. Do you think Elections Canada within itself can do something in that regard, or is that too onerous?

Mr. Marc Mayrand: They could do it in the context of elections, that's for sure. There could be other organizations out there that are also well suited to do it in a broader context.

The issues with social media are not only related to elections, of course, and that's why I'm suggesting.... It may be Elections Canada during the context of an election that does a bit on this in their campaign about informing electors about how and where to vote. They also could inform them about how they can assess the reliability of the data or the information that comes to them.

[*Translation*]

The Chair: Thank you.

We will now go to Mr. Richards.

[*English*]

Mr. Blake Richards: Thanks, Mr. Chair.

Thank you for being here, sir. It sure brings back a lot of good memories.

Mr. Marc Mayrand: Does it?

Voices: Oh, oh!

Mr. Blake Richards: I want to ask you about what your successor has called "unusual", which is the idea of putting together an implementation plan prior to the legislation being passed in the House of Commons or through Parliament. I want to hear your thoughts on that. Would you also find that unusual?

Mr. Marc Mayrand: We always prefer to work with the final legislation, of course, but in some contexts...and that's not new. The minute a bill is tabled, Elections Canada does a very detailed analysis. They come to this committee and propose mostly technical changes to make sure it works. They also start looking at what it means for Elections Canada and for electors, candidates, and parties. We need to think about how these handbooks will be modified. That part does begin very early, as soon as legislation is tabled, but—

Mr. Blake Richards: It's understandable, obviously, that any time any legislation would affect any organization, they're going to look at it to see how it's going to play out if it's passed.

Mr. Marc Mayrand: Exactly, yes.

Mr. Blake Richards: I suppose, though, to go beyond looking at it and determining in what kinds of directions you would need to go, maybe that's where it would get a little unusual. What would your past experience have been with that, in terms of how far you would have gone in that?

Mr. Marc Mayrand: You progress with the certainties as certainties progress regarding the bill.

We were, we are, and I'm sure Elections Canada still is very cautious about spending public funds on something that is not yet the law. Again, it's part of managing risk in our business. We also need to be ready to implement legislation, the will of Parliament. Sometimes we don't have too much time to do it. As much preparatory work as can be done normally would be done.

Mr. Blake Richards: Yes, and I suspect that probably in this situation that is compounded by the fact that the government did take so long. I think you had even cautioned that this legislation would be needed prior to the time that it was. Of course, your successor has also done that, so that obviously is a compounding factor here as well.

I guess that would actually have an impact on the next thing I want to ask you about as well. You talked a bit about the foreign funding, that you feel, obviously, that this legislation doesn't really address the problem in its entirety, for sure. You mentioned the idea of the commingling of funds. You talked about collusion. I wonder if you could elaborate a bit more on both of those things.

Before you do, I wonder if you could just tell me something. You mentioned very honestly that you feel that probably some of the things you feel would be needed wouldn't be possible because of the late date we're at, at this point, prior to the next election. I'm just wondering. Obviously you had these concerns when you were the CEO as well. Is this something that you urged the government at that time to look at and to deal with? If so, why do you think it wasn't done?

● (1030)

Mr. Marc Mayrand: On the issue of foreign funds in our system, again, we had a regime in place for a very long period, and the issue truly had not come up. As I mentioned in my remarks, this is an issue that certainly has developed significantly since the last election. My point in my remarks was that the bill tries to address the issue. If the concern is about the commingling or the source of funds, you would probably need to look at a contribution regime. It could be similar to what exists for political entities, but I think serious questions would need to be asked. Given the third party's constitutional rights, do you impose the same controls on sources and impose the same amounts or limits?

I'm afraid that right now we're out of time to fix that before the next GE. I'm sorry to say that, but if it's a real concern, I don't know how this could be effectively addressed to assure that the intentions are carried through and ensure that it doesn't have negative side impacts that generate all sorts of court disputes. That's why I'm reserved on this one.

Mr. Blake Richards: Understood.

That being said, it's always wise for us to know what would be ideal, and whether it's possible or not is something we have to look at as well. If it's not something that's possible now because the government has waited so long, then maybe we'd look at it in the future as well.

What are your thoughts in that regard? It sounds as though this is where you're leading, but I'll just ask very specifically. Obviously, in the case of political parties it's only individuals who can donate, so foreign individuals cannot, in fact, donate to a candidate or a political party in our system. Obviously that differs for these third parties. Foreign entities can in fact donate, even in unlimited amounts. Is it your opinion that this may be something that should be looked at to harmonize that? In other words, should foreign funding not be able to go to these third party groups, to treat them the same as other entities within the political system and the political parties? Also, there's the idea of contribution limits for political purposes. What are your thoughts on those two things?

Mr. Marc Mayrand: There are a few things.

Bill C-76 prohibits foreign contributions. The problem is that third party entities receive funds from various sources, and those sources lose their character as they get commingled in the general revenues of the third party. That is one aspect. Bill C-76 prohibits contributions but does not address the commingling.

Personally, I am of the view that if third parties, specifically in the context of a short electoral period and a short pre-writ period, want to run political campaigns, they should be governed around generally the same principles as other participants in the system. This is recognizing that third parties are distinct, with a purpose other than to achieve office—in fact, they don't—but still, if they wish to participate in the campaign, fine, but they should be subject to a regime that limits their influence proportionate to the message they want carried.

The Chair: Thank you very much.

[*Translation*]

And now it's Mr. Cullen's turn.

[*English*]

my red-eye partner.

[*Translation*]

Mr. Nathan Cullen (Skeena—Bulkley Valley, NDP): Your French is good, Mr. Chair.

The Chair: Naturally.

[*English*]

Mr. Nathan Cullen: Mr. Mayrand, it's truly a pleasure to see you again.

I'll start with the thing we left off with there. From your estimation, and it sounds like from those of many others, it may be too late in the process to do something significant on the third party contributions and the foreign influence. I lament that, because I think Canadians and our Canadian political system might be a bit naive about the interests of outside groups, other governments, in terms of trying to influence our elections.

Would you agree with that assessment, that Canadians previously...? Maybe Brexit and maybe the Trump election have changed our perspective a bit, but has it been—

● (1035)

Mr. Marc Mayrand: Do you mean foreign influence?

Mr. Nathan Cullen: Foreign influence, yes.

Mr. Marc Mayrand: Certainly, I think, my view is that there's been very...if any, evidence of that in Canada.

That being said, I think it would be wise to be proactive and not wait for something to happen. I think Bill C-76 tried to do a few very valid things there, but again, as I mentioned, there's the whole area of social media and the whole area of being able to track the funds that come through the system.

Mr. Nathan Cullen: To be properly proactive, to try to equal what the potential threat is....

The potential threat is significant. I would argue that in the U.S. elections, which a number of us were observers to, the influence of foreign governments, in particular Russia, on their election, as has been revealed through multiple investigations, was profound. We don't know, but it may have affected the outcome as to who is president. It's still to be seen, but at least the question is there, and I think the question is a valid question. Would you agree that foreign influence in the U.S. election was real, that—

Mr. Marc Mayrand: There is no doubt in my mind that we should not tolerate any foreign influence or interference.

Mr. Nathan Cullen: Does Bill C-76 go far enough in terms of our being able to go into the next election knowing that there is no similar circumstance that could take place in Canada with misinformation or with the amount of money that can flow through Canadian organizations who are participating in our election?

Mr. Marc Mayrand: As I said, I think this has been achieved mostly through the misuse—I characterize it as that, as "misuse"—of social media and electronic media. In that context, I'm not sure Bill C-76 does make a difference there, honestly.

I think the issues are broader than the electoral process.

Mr. Nathan Cullen: Process is part of it, and certainly a key part of it.

Mr. Marc Mayrand: Yes, definitely, but again, I'm talking of experience here, when we had the issues with automated calls. It was so easy to mask the provider. These things are run from around the world, so tracing them, tracking them, and going to the source is an extreme challenge for any enforcement body.

Mr. Nathan Cullen: Because I like specific examples, let's look at that. Let's say somebody is setting up a misinformation robocall scheme, sending voters to the wrong polls and putting out misinformation. Does Bill C-76 do enough to prevent that threat from happening again?

Mr. Marc Mayrand: That was done before, in Bill C-31. Again, so far, it makes an improvement here by requiring those who place those calls to keep a list of the calls they place and provide that to the CRTC. There is an improvement—

Mr. Nathan Cullen: Let me go to privacy. I'm thinking through your testimony, and I think this was the one aspect that you were most clear on in terms of the shortcomings of the bill.

In terms of the application of basic privacy laws to the political parties, you've said this bill fails to set proper standards and lacks oversight—I'm paraphrasing—but there are no significant penalties. Why is this so important? A lot of Canadians would ask why it matters that parties are not subject to privacy laws. All Bill C-76 does is say "please post your policy on the web", but that's it. It doesn't change any of the fundamental wording....

Mr. Marc Mayrand: I have to find it.

Mr. Nathan Cullen: Yes, you have to find it.

Mr. Marc Mayrand: I tried over the weekend. That's why I'm saying—

Mr. Nathan Cullen: I'm sure Canadians will be digging through party websites to find their policy statements around privacy. What is the missed opportunity here in terms of subjecting parties to proper privacy laws?

Mr. Marc Mayrand: I think it's well known, in a sense, that parties.... We're in the era of data. Data is key to political parties in terms of engaging their supporters, identifying them, and maybe moving some neutral electors towards their views. Data is key. We are not sure how it's collected. We're not sure how it's being used. We're not sure how it's being shared. We're not sure about the accuracy of that data. Also, there's no real way for a Canadian to find this out: what exact information is being tracked on me? There is—

● (1040)

Mr. Nathan Cullen: Why is that a problem?

Mr. Marc Mayrand: I would like to know whether I'm seen as a supporter or an opponent, or what category I'm in and what kind of information you have on me, and where this information comes from if it doesn't come from me.

Mr. Nathan Cullen: Also, if somebody is misusing your information and selling it, for example, which is still, I understand, permitted under the law and would still be permitted under the law if this bill were to become law, as it's written right now....

Mr. Marc Mayrand: Yes. Hopefully, it will be with consent. If not, I think it's—

Mr. Nathan Cullen: You say "hopefully". Hope is a wonderful thing to have. Does Bill C-76 require parties to seek the consent of voters before selling their data?

Mr. Marc Mayrand: I would have to double-check, but probably not.

Mr. Nathan Cullen: Let me answer my own question: no.

For a private entity, a bank or any association you belong to that has your information, under privacy laws in Canada, they would have to divulge, first of all, the information they have on you as a citizen. They would also have to inform you if they ever sought to sell your information. Political parties are in a special category.

Mr. Marc Mayrand: They're in a no-rules territory in that regard. There's nothing there.

The Chair: Thank you very much.

Ms. Tassi.

Ms. Filomena Tassi (Hamilton West—Ancaster—Dundas, Lib.): Good morning. Thank you for your presence here today. We really appreciate your expertise and your testimony.

Let me begin with this. Overall, what's your feeling on this legislation? How do you feel about Bill C-76?

Mr. Marc Mayrand: As I indicated earlier, it's a sound piece of legislation. I think it deserves the scrutiny of Parliament, but at the end of the day, maybe with some improvements, it should become law. I think it would make a real difference for electors.

Ms. Filomena Tassi: Why do you say that?

Mr. Marc Mayrand: Because it's much more inclusive and accessible. It makes the system much more inclusive for electors and for candidates. I'm thinking of those with disabilities, who would benefit greatly from this piece of legislation. I'm thinking of the youth, who would benefit greatly from this legislation.

It would allow Elections Canada to move more aggressively on modernizing services so that, again, you would avoid the waiting lines at the polls. It would become a lot more efficient in terms of serving electors. Importantly, also, it will enhance the integrity of our system.

For all those reasons, I strongly support the legislation. I've pointed out a few areas that to my mind could be improved.

Ms. Filomena Tassi: Okay, I'd like to dig a little bit deeper on some of the points you have just raised. With respect to youth, how do you see this legislation to be encouraging youth?

Mr. Marc Mayrand: There are a few things. First of all there is the education mandate of Elections Canada, which is expanded to anchor its civic engagement, particularly among youth.

There is preregistration of youth for 16- to 18-year-olds, which should over time make a real difference, because, as I think you've heard before, 18- to 24-year-olds represent the segment that has the lowest registration rate among all demographic groups, all age groups. Preregistration would allow Elections Canada to engage them early, when we know where they are, and it would allow Elections Canada to reach them when they reach voting age.

The other provision in there is facilitating the recruitment of young people to work at the polls. I certainly welcome that.

These are all small measures that individually, over time, if they are well done, should improve engagement in civic education among youth about our democracy.

Ms. Filomena Tassi: I'm very glad to hear your support for that. I've worked with youth for over 20 years, and I think their engagement is extremely important.

There has been some concern raised with respect to the privacy of information with regard to the early registration of youth. Do you have any concerns in that regard with respect to Bill C-76?

● (1045)

Mr. Marc Mayrand: That information, as far as I can tell, is not to be shared with anyone. It's on the Elections Canada registry. It's protected. It's behind firewalls. It's well protected, and Elections Canada is always looking at security threats and IT threats and taking the most advanced measures to protect against those.

I didn't see any provision in the bill that would allow the sharing of the information in that register.

Ms. Filomena Tassi: Thank you. It is voluntary as well, which further supports that.

You also mentioned people with disabilities. This is another area that's close to my heart. How do you see this legislation promoting voting by people with disabilities, making it more accessible for people with disabilities to vote?

Mr. Marc Mayrand: There is more flexibility in terms of picking the location where they can vote, making sure it's accessible. There are also provisions in the act that allow introducing technology to serve electors with disabilities, to remove barriers there. When I was at Elections Canada, we were working closely with various disability groups. We had a committee there that met regularly to discuss some of the challenges there and how we can use technology. It's important to understand that they are looking at technology that's adapted to each peculiar situation. They are not looking at generic technology that they never use, with which they are not familiar, like those voting machines that exist in some polling sites, which are rarely used because they are not familiar with them.

Through this ongoing discussion with those groups, I'm confident that the bill will allow some breakthroughs in allowing technology to be used to better serve electors.

Ms. Filomena Tassi: Do you have any comments with respect to expanding the definition of "disability" to go beyond physical disability?

Could we have your comments on that?

Mr. Marc Mayrand: That's another welcome change. I think it is something we had proposed in 2016. Again, it avoids the distinction that sometimes is quite difficult to make in reality.

I would also note that candidates will also benefit from the provisions. They will have a greater rate of reimbursement, an important measure, which I believe is an incentive for candidates and parties to reach out to disabled electors with the tools they use to understand the communications. These are important measures. Again, that's what I mean when I say it makes the system more inclusive.

Ms. Filomena Tassi: Very good.

With respect to the voter information cards, you've commented that, in your view, there is absolutely no issue with respect to those being used for fraudulent voting.

For me, in particular, I look at seniors and students, because they are probably the two groups that use the VIC most. Can you speak from your experience about how those groups and others have relied on the VIC, how voters rely on that as a piece of identification that can be used, and the consequences of the Fair Elections Act having taken that away as a piece of identification?

Mr. Marc Mayrand: There are a few points.

We have an interesting regime in terms of identification in Canada. We have a requirement by federal legislation with regard to identification and proof of address, but we don't have a national card. That I find quite striking. We don't have a national card that meets all the requirements for identification. That forces us to adopt a system that's rather complex. It leads to, I believe, 32 or even more pieces of ID that are to be accepted.

At that time, in 2014, given what we knew about youth and seniors mostly, and also, I must say, aboriginal people living on reserve, we thought those groups were facing unique challenges in terms of proving who they were and where they lived. We ran pilots in by-elections and also in the GE. We allowed the use of the VIC in very specific circumstances, such as in student residences, where they're not likely to have a document establishing where they live. If they have a driver's licence—many don't—it probably has the address of whatever place they live with their parents.

We used it for this group and we used it for seniors. Nowadays, seniors often don't have access to their personal documents. Many of them don't have any bills that come in their name, so there's no address; similarly for aboriginals. In those cases, which were all closed environments, I did allow the use of the VIC, and it was a success, a real success. It allowed people to vote who may not otherwise have been able to. It also allowed them to vote independently, which is important, and to vote expeditiously.

● (1050)

The Chair: Thank you much.

[*Translation*]

We now go to Mr. Nater.

[*English*]

Mr. John Nater (Perth—Wellington, CPC): Thank you, Mr. Chair.

Thank you, Mr. Mayrand, for joining us today. It's always a pleasure to hear your commentary and your learned experience on this matter. Forgive me if I seem to jump around to a few different topics, but I do want to try to get to as much as I can in my five minutes.

I want to start with the foreign influence idea and the suggestion of the commingling, the laundering, of funds. I'm wondering if you could just confirm my thinking here. What you're looking at here is that where an organization, a third party, may receive a total of $100,000 of funding, $50,000 domestic contributions and $50,000 foreign, conceivably that organization could use that $50,000 from foreign money to allocate on its activity outside of an electoral period, thereby freeing up the other $50,000 to spend on elections and election purposes.

Is that where you see the challenge with the laundering type of idea?

Mr. Marc Mayrand: No, sorry, the laundering was the foreign entity providing funds to a Canadian one, and the Canadian one turning around and setting up a subsidiary, for example, or a subgroup, let's say, and providing them funds from their general revenues now, so you've lost the foreign nature. At that point, it is arguably Canadian money. I think that should be prevented in the legislation. There should be an anti-collusion or anti-laundering provision in the bill.

With regard to commingling, at the end of the day, I understand the point being made. In my view, the only solution about this would be to set up a contribution regime. That's the only way. Again, if third parties want to influence a campaign to a significant financial level, they should be subjected to a regime of contribution, making sure that the funds they use come from Canadians.

Mr. John Nater: Conceivably, then, they'd be disclosed online, as we do for $200-plus donations as well.

Mr. Marc Mayrand: Absolutely, yes.

Mr. John Nater: We talked a little bit about the audits that would have to be undertaken on these organizations. Those would all be occurring after an election, so any challenges that would arise, any indiscretions, would likely be caught after an election. Do you see any concerns with how this might operate in reality in terms of when these breaches may occur and how they're caught?

Mr. Marc Mayrand: It's no different from what exists for candidates or parties in that regard. Audits always take place after the fact, so I am not sure how we can cure that, except eventually moving towards a system in which we have real-time disclosure of contributions. Technology probably allows for that. I'm not sure it can be done. Elections Canada would have to answer that, but it's doable and you could verify a contribution amount and sources in real time, with an address. That can be achieved.

Mr. John Nater: Thank you.

I want to jump a little bit and talk about the concept you mentioned of having, perhaps, a repository of digital advertising. I was hoping you might expand on this a little bit. I'm assuming that if a candidate were to buy Facebook ads, or a party were to buy online advertising, that would already be caught in terms of declaring the expense during a return.

Are you looking at going further and having something encompassing third parties, individuals, or those not directly involved in the electoral process itself but who would still have an impact on the electoral process? Is that...?

● (1055)

Mr. Marc Mayrand: There is a bit of that, but it goes beyond that. It's really a matter of being able to observe, for any citizen, what kind of advertising is going on, who is being targeted, what the messages are, and whether or not they are consistent.

Also, it is a way of looking at whether or not these are legitimate advertisements. That's another issue that could be illustrated by that sort of a repository.

Mr. John Nater: Currently—

Mr. Marc Mayrand: From what I understand, Facebook is looking at something like that, but I am asking why we wouldn't have a national repository somewhere of all the ads on all platforms, rather than having to rely on *The Globe and Mail* approach that probably seeks to track those ads. It seems to me it's getting very complex to be able to track which ads are taking place regarding the common public good, which is the election.

Mr. John Nater: I appreciate that.

Just very briefly, because I know my time is nearly up, traditional advertising, whether print media or television, is subject to a number of different rules, with, for example, the Competition Bureau, requiring a degree of truth in advertising. Currently we don't have as strict or as enforceable a regime for that for online dealings, if you will. Are you suggesting perhaps we should apply similar—

Mr. Marc Mayrand: It's something we should explore.

Interestingly, social media seems to be totally exempt from the general rules that govern public discourse, and yet it is public discourse. Some would argue that it's not that public, but in my view it is public discourse. Anyway, it goes well beyond elections. It may give them an unfair advantage over traditional media from time to time, and I think you as parliamentarians have heard of that.

The Chair: Okay.

Thank you very much.

For our last intervenor, we have Mr. Bittle.

Mr. Chris Bittle: Thank you so much.

I'd like to follow up on the social media. I've seen the negative impacts in terms of misinformation being out there and it coming back. I've learned the term "brigading", which involves a large number of people—trolls—getting together and attacking.

Is there any jurisdiction that, to your mind, has had any success in legislating in this area or in attempting to get a handle on social media in the context of an election?

Mr. Marc Mayrand: It's a truly emerging issue. I think everybody is looking at it. There is enough evidence now of interference, mostly foreign but also other types of interference, that it is becoming an issue of concern for many governments around the world.

The U.S., as you all know, is certainly looking at things. I don't know that they have made any new regulations yet. I think there has been a lot of focus on Facebook, to name one, but again there seems to be a general reluctance and certainly caution—maybe it's not reluctance but great caution—about introducing a regulatory regime. Yet I think the trust in our democracy depends on sound regulation here, because these platforms need to be made accountable for what's going on there.

Mr. Chris Bittle: Thank you.

You mentioned vouching, and I'm interested in this in terms of an amendment for nurses in a long-term care facility. Are there any other types of niche vouching—maybe "niche" isn't the right term—or items like that where you would recommend that there be an exemption similar to that one?

Mr. Marc Mayrand: Certainly, seniors homes, long-term care facilities, come to mind. Possibly—I'm not sure—it's workable in the area of students living in residence. They should be well served by the VIC now, if that goes through. Probably aboriginal people living on reserve.... This is a real issue in those areas in terms of proving who they are and where they live, yet they vote mostly on their reserve, so we know where they live.

● (1100)

Mr. Chris Bittle: Thank you.

In terms of PIPEDA, I know that's a standard that people point to as something that political parties should strive for. Have you done any analysis in terms of whether the principles within that legislation would apply well to political parties? They're a different type of organization. I'll give you one example. In terms of an individual being able to access their own information, that may seem logical, but in the realm of politics, if there then are thousands of individuals from another party calling up and we don't necessarily have large organizations, it may not be effective.

Mr. Marc Mayrand: I understand that concern. That's why, I guess.... Certainly, an improvement would be to at least have an independent audit, an independent yearly certification, so that now there's a proper policy in place that meets the standard and it is complying. It is something that I understand is largely used in the private industry, and that would, in a sense, address some of the concerns I hear you raising.

Mr. Chris Bittle: Thank you so much.

The Chair: Thank you very much for being here today. Your wise counsel is always very helpful.

Mr. Marc Mayrand: Thank you.

The Chair: We'll suspend while we change witnesses.

●

——————————— (Pause) ———————————

●

The Chair: Good morning. Welcome back to the 109th meeting of the Standing Committee on Procedure and House Affairs.

For today's panel, we are pleased to welcome Michael Pal, assistant professor and director, public law group, faculty of law, University of Ottawa, and Andrea Furlong, executive director, Council of Canadians.

I will now turn the floor over to Professor Pal for his opening statement. He will be followed by Ms. Furlong.

Thank you very much for coming. It's great to have you here.

Professor Michael Pal (Assistant Professor and Director, Public Law Group, Faculty of Law, University of Ottawa, As an Individual): Thank you very much, members of the committee, for having me. I really appreciate the invitation to speak to these important issues.

I'm a professor of constitutional law and election law at the University of Ottawa, just down the road. I'm going to focus on what I think are four or five of the key take-aways in the bill. It's 349 pages, by my count, so I'm happy to discuss issues other than the ones I raise in my initial presentation.

The first one I want to flag, which Mr. Mayrand discussed, is the pre-writ spending limits. As of June 30 in an election year, there will be a spending limit, with the inflation factor, of about $1.5 million for political parties and $1 million for third parties. I think this is an extremely important and overdue amendment to the Elections Act. We've seen third parties and political parties from across the political spectrum—I think it's a non-partisan issue—using one of the large loopholes that exist in the Elections Act.

We have very tightly regulated spending during the election campaign period. That was found to be constitutional by the Supreme Court of Canada in a case called Harper. The obvious loophole was that spending rules were not applied in the pre-writ period, so you could simply spend millions of dollars, unregulated, uncapped, prior to the start of the official campaign. Third parties have increasingly been doing that in Canada, especially since the 2011 election, as have political parties, so having a pre-writ limit is extremely important.

If anything, I would have liked to see an even longer pre-writ period. I know there are constitutional concerns. The Harper case was about spending limits during the campaign period. This is pushing the constitutional envelope a little bit by putting in spending restrictions in the pre-writ period. The bill tries to deal with that by having it start only on June 30 rather than earlier, as occurs in some jurisdictions; changing the definition of "election advertising" to call it "partisan advertising" so that it will capture less advertising; and then also having quite generous, I would say, spending limits in terms of the total amount that's permitted in the pre-writ period. All those provisions in the act to try to manage the constitutional risk make sense to me, but I think that given the example we have in the United States and given the data we have about spending by third parties and political parties in recent Canadian elections, the bill could have been even more aggressive in pushing out a longer pre-writ period. I do think it's very necessary to have in the pre-writ period spending limits of the kind the bill has put in place.

I should say it would also apply to some activities beyond just advertising, which is important given that third parties are now doing many of the things we would traditionally understand political parties to have done in the past. There's been tons of evidence in the United States, in a number of recent election cycles, of their version of third parties doing things like Get Out The Vote, organizing campaign events, doing messaging—all the sorts of things that parties traditionally have done. I think that's an important feature of Bill C-76.

The second aspect of the bill that I'd like to discuss is the non-resident voting provision. Previously, you would lose your right to cast a ballot if you lived overseas for five or more years. The bill would get rid of that restriction. I also think that's a long overdue change and a really positive development for the more than one million Canadian citizens who may wish to exercise their right to vote. Even among those Canadians who are abroad for fewer than five years, there's been a small percentage voting. I think this will encourage parties and encourage citizens to be more engaged in the electoral process, and hopefully, will drive voter turnout up.

There is a Supreme Court case, which the committee will be aware of, Frank v. Canada. We are waiting to hear what the Supreme Court will say about the constitutionality of the five-year limit. Even if the court decides it's constitutional, it is still within the jurisdiction of Parliament to decide whether or not to get rid of the rule. Another feature of Bill C-76 that I applaud is expanding the right to vote to non-residents who are abroad for more than five years.

One area in which I'm a bit more critical of the bill is voter privacy. I paid great attention to Mr. Mayrand's comments. As you'll know, the bill requires parties simply to have policies and to address certain specific issues in those policies. Political parties do already have policies on privacy.

● (1105)

I would like to see provisions expanded so that parties will be obliged to actually follow specific rules, to not just have a policy on an issue but to meet certain standards, which the public and private sectors more generally do. Political parties are one of the only exceptions to PIPEDA and the Privacy Act. I think that is an anomaly that needs to be rectified, because parties, as you well know, now collect, use, and analyze enormous amounts of personally sensitive data.

In the earlier round of questions, there was a question about how it could be adapted to political parties. I think people should have a right to be notified if there is a breach of the rules. They should have a right to know what information a party holds about them.

Also, under very limited circumstances, I don't think political parties should be permitted to sell the data they collect. We want to facilitate the connection between citizens and parties. That's something we don't want to stop, but part of the trust mechanism there is that voters believe their data is going to be used for the political process, not for profit-making.

Second-last, on social media platforms, there is a new offence in the bill in terms of how social media platforms or advertising platforms generally should not be able to sell space to foreign entities. I think that's a very positive move. I would just draw the committee's attention to the current rules in the Elections Act that are imposed on TV broadcasters. They cannot charge more than the lowest basically available rate to any political party seeking to advertise. What this effectively means is that it gives political parties a right to have advertising time at a reasonable rate, but it also means that the same rate has to be charged to all political parties.

Political advertising is now happening to a great extent on Facebook. There is nothing in the current Elections Act or in Bill C-76 that would prevent Facebook, through what they call their "ad auction system", from charging differential rates to different political parties. The current rule for broadcasters is in the Elections Act for a reason. There's no principled reason why that shouldn't also apply to social media advertisers, which may have commercial interests at heart when they're making decisions about their algorithms.

I would just conclude by saying that one of the other very positive features in the bill, which I don't think has gotten enough attention, is the 90% reimbursement for child care expenses for candidates. That is an important and quite practical measure to try to encourage a more diverse array of candidates in the political process.

Those are my initial comments. I look forward to your questions on any of those issues or the other matters in the bill.

Thank you very much.

● (1110)

The Chair: Thank you very much

Ms. Furlong.

Ms. Andrea Furlong (Executive Director, Council of Canadians): Good morning. Thank you for the opportunity given to the Council of Canadians, and me as executive director, to present today to the Standing Committee on Procedure and House Affairs regarding Bill C-76.

I speak to the committee today as we prepare to go to court to defend the constitutional right of every Canadian of age to vote in next year's federal election.

The issues of greatest concern to us in the current legislation are those provisions that will rescind amendments to the Canada Elections Act made by the previous government in passing the so-called Fair Elections Act, which made it more difficult for the Chief Electoral Officer to communicate with Canadians about the electoral process and their right to vote; stripped the Chief Electoral Officer of his ability to authorize the voter information card as a means for proving an elector's residence or identity; diminished the independence and accountability of the Commissioner of Canada Elections; and effectively eliminated vouching as a means for people without the necessary identification to obtain a ballot.

In response to the Fair Elections Act, the Council of Canadians partnered with the Canadian Federation of Students to file a charter challenge, not only to repeal those problematic elements of the act but also to defend the most fundamental right in a democratic society: the right to vote. We launched the charter challenge because the Fair Elections Act made it harder for students, people who are de-housed, seniors, indigenous people, and others who have difficulty proving their identity and residence to vote. That application is to be heard by the Ontario superior court in October 2018, a date chosen so that the Office of the Chief Electoral Officer will have the six months he requires to implement the necessary changes, should we succeed, before the 2019 federal election. We certainly hope that the provisions of Bill C-76 will address the issues now before the court and will come into force in time to obviate the need for that hearing.

Until the bill receives royal assent, our case will proceed. We have amassed a substantial body of expert opinion, including from Harry Neufeld, the former chief electoral officer of British Columbia, stating that the Fair Elections Act effectively limits ballot access by increasing the administrative burden for any voter who does not possess acceptable documentation that proves their current address of residence. It has made the vouching process more intimidating to participants. It's difficult for all to understand and cumbersome for election officers to administer.

This also eliminates the discretion of the Chief Electoral Officer to allow any use of the voter identification card as a legitimate form of address identification. Elections Canada has described the problem in this way:

> With regard to accessibility, a continued challenge in the identification regime is the difficulty some electors face in providing documentary proof of their residence. Among the larger challenges is that no piece of identification issued by the [federal government] contains all three elements required in a single piece by the Act: the elector's photograph, name and address.

The difficulty electors may encounter in proving their current address falls disproportionately on certain groups. As described by Elections Canada, these groups are indigenous people; electors living on first nations reserves; electors living in long-term care facilities, including seniors; youth, including students; the de-housed, also known as homeless electors; and electors who have recently moved or who have difficulty proving their physical address.

The Harper government's declared objectives in enacting the Fair Elections Act were to protect against fraud and to uphold the integrity of our electoral system, but study after study has shown that claims about in-person voter fraud have no foundation and serve as a pretext for measures intended to prevent unfriendly voters from being able to cast a ballot. In fact, public concern about voter fraud, as we saw following the 2011 election robocall scandal, was about organized efforts to deter people from voting, not about individuals seeking to vote fraudulently.

The groups I have highlighted who are disproportionately challenged to prove their identity and residence are electors who care deeply about a host of public policy issues, particularly those that affect their daily lives and that often become important electoral issues. They would have strong views about what government should be doing to deal with the problems they confront, and are keen to participate in the electoral process.

● (1115)

Under the Constitution, all Canadians are guaranteed the right to vote, yet for many, including tens of thousands of electors who are on the voter list, the voter identification requirements of the act are a significant impediment to exercising their democratic franchise.

In summary, the Council of Canadians is strongly supportive of those provisions of Bill C-76 that will reverse the anti-democratic reforms of the previous government, including an expansion of the Chief Electoral Officer's mandate to include public education campaigns; a reversal of changes that disallowed the use of a voter information card as a piece of eligible identification at polling stations; a reversal of changes that disallowed one voter vouching for another; and more independence to the Commissioner of Canada Elections.

Thank you.

The Chair: Thank you, both, for your testimony.

Now we'll go to some rounds of questions, and we'll start with Mr. Simms.

Mr. Scott Simms: Thank you, Chair.

Thank you, guests, for joining us today. I really appreciate this as we delve into Bill C-76.

Ms. Furlong, does the gist of Bill C-76, the main thrust of it and all that it's hoping to accomplish, also satisfy what will be in front of the Ontario superior court in the fall of 2018?

● (1120)

Ms. Andrea Furlong: It would. We're mostly concerned about the timeline.

As you know, Bill C-33 stalled, and now we have Bill C-76. Our timeline is very intentional, because we want this to be provided for the next federal election, and for Elections Canada to be able to have the time. Our understanding is that they need at least six months, so we're going to continue with our court challenge until the bill has reached royal assent.

To answer your question, yes, it would.

Mr. Scott Simms: Okay. I may come back to you in just a second.

Mr. Pal, I want to go to you first.

One of the things this bill does...and I agree with you on the fact that it makes a delineation between what the pre-writ period is and activities into the pre-writ period. Can you tell me what is going to be the biggest benefit of this?

Prof. Michael Pal: Do you mean what is going to be the biggest benefit of the pre-writ period?

Mr. Scott Simms: I mean the coming into force of Bill C-76.

Prof. Michael Pal: We're talking a lot about problems and how to fill them, but globally Canada has one of the best campaign finance systems in the world. When we look especially to the south, the U.S. campaign finance system is broken. There are enormous amounts of money in the system, and it has a tremendous amount of influence. Canada has an egalitarian approach. That is what the Supreme Court said in Harper, and it's reflected in the Elections Act.

The challenge we had was that if enormous amounts of money were going to be spent in the pre-writ period, how could you still say that you had an egalitarian model? If you have spending limits in the writ period, you also need to have some kind of spending limit in the pre-writ period.

To me, what it really does is further those egalitarian values that are in the Elections Act, which the Supreme Court said are legitimate in the Harper case, by making sure there is a level playing field also in the pre-writ period so that politics is not dominated by those groups, on whatever side of the political spectrum they may be, that have significant access to resources. It gives the average Canadian voter or citizen or individual much more of a chance of having a say and not having their voice drowned out by those with resources.

Mr. Scott Simms: One of the things about the pre-writ period—obviously there are several things about the pre-writ period—is that obviously you do get a level of transparency.

I just want to jump into the third party aspect of this as well, which I think is very important, as you say, as for anything else. Regarding the element of transparency—who is involved in what campaign and who is involved in putting out a message that is construed to be a third party—to what extent is this now going to improve that situation?

Prof. Michael Pal: Is it to what extent it's going to improve transparency...? I think it will go quite a ways to improving it. The period only kicks in on June 30. That's the period we're talking about. We started seeing a lot of third parties advertising in only the unregulated period. They would stop when the campaign officially started, and when the spending limits and many more of the transparency requirements in the act for registration and disclosure of details about the workings of those groups would kick in. We now have more transparency in that immediate pre-writ period.

What it will mean is that you'll also have a "pre-pre-writ" period. Before June 30, advertising is still unregulated and there are very minimal requirements in terms of transparency—or none—for third parties depending on how many.... It doesn't dramatically transform transparency throughout the year, but it improves it in the immediate run-up to an election, which I think most voters would say is the most important to them. Who is trying to influence them by running a particular ad? How much money are they spending? Also, as well, potentially, where did they get that money from? In the act, there are disclosure rules that are quite important as to contributions.

It definitely improves transparency, but for a particular time period.

Mr. Scott Simms: Right, so it's the stop-start mechanism that was there before and obviously was well open. It was not regulated in any which way. It was hard to know who was doing what until the hammer came down, as it were—or the writ was dropped, I should say. Thank you for that.

Ms. Furlong, I've long been a fan of the voter information card, as it's technically called. I like to call it voter identification card—I'm putting my bias on the table—because I think it should be used as ID. Quite frankly, as you and others point out, this is really and truly the only national type of ID available.

I've talked on and on of stories about many seniors who tack this card on their refrigerators or to the wall and say, "This is my way of voting, and that card tells me I'm going to exercise my duty as a Canadian citizen." Only when they got there did they find out that it's not part of identification whatsoever. People were absolutely dumbfounded.

I want you to drill into one aspect with which I didn't have a lot of experience, and that is the first nations. I didn't have a reserve at the time; I do now. In your work, how have you seen this voter information card becoming true ID to help out in first nations situations?

● (1125)

Ms. Andrea Furlong: I think I showed a bit of my bias there, because I did refer to it as the "voter identification card" at one point in my remarks.

Mr. Scott Simms: We've all done that.

Ms. Andrea Furlong: For anyone who shares accommodation and housing—particularly the groups I highlighted—and doesn't have their name on a utility bill or on the lease and doesn't hold a driver's licence, it's difficult to confirm their identity and place of residence. The rules are very narrow. Even with vouching, conceivably, if a poll has 250 electors, the person across the street from you, who is your neighbour and could vouch for you, truly cannot vouch for you because they're not in the same polling station.

The voter information card is one piece of identification. You need two pieces, right? In some of the ways that people were looking at fraud, it was that those could be used fraudulently, but you also need another piece of ID, and that really gives Elections Canada the assurance that the person who is coming forward with that identification card is who they say they are. With students moving quite a bit, their parents' place might be their place of residence where they might have a driver's licence, but if they're in another province and they're moving, it's difficult for them as well to establish their place of residence.

Mr. Scott Simms: Thank you, Ms. Furlong.

I'm not sure about my time...?

The Chair: You don't have any.

Voices: Oh, oh!

Mr. Scott Simms: People have told me about this before, about how I should just keep going. Okay. All right.

The Chair: Mr. Richards.

Mr. Blake Richards: Thanks, Mr. Chair.

Let me start with you, Ms. Furlong, in terms of a bit of background about your organization. From where does your organization receive its funding? Do you receive any foreign funding?

Ms. Andrea Furlong: We are the Council of Canadians, which is the largest citizen-based social justice group in the country. We have individual donors who donate to us.

For our campaign work, we do have an international program on water, which is called the "Blue Planet Project". We have foundations that donate to that work.

Mr. Blake Richards: Do those include foreign foundations, or are they just all Canadian?

Ms. Andrea Furlong: They could be located internationally, so in the U.S.

Mr. Blake Richards: You mentioned that you do some election work. Can you give us a bit of a sense of what type of advocacy work you do during elections?

Ms. Andrea Furlong: We're a non-partisan organization. In our work we focus on public health care, we focus on the right to water, and we focus on climate justice. With those issues, during the time of an election we look at all the various parties. We look at how they're working on those issues and what their platforms say. Then we collect that information and make it available to people to inform their decision on how to vote.

We don't tell people how to vote. Again, we're non-partisan. As a civil society organization, that's very important to us. We want to inform people on the issues that are very important to us from a social justice perspective and on how the parties are working on those issues.

Mr. Blake Richards: So you analyze the issues and determine what political parties align with the thoughts and beliefs of your organization on those. You don't necessarily advocate for who voters should vote for, but you provide information about parties and how they align with those interests. Is that correct?

Ms. Andrea Furlong: Yes.

Mr. Blake Richards: How is that information provided? Do you advertise that information in some way? Is it simply mailed to your members? How does that information get distributed or shared?

Ms. Andrea Furlong: We certainly distribute it amongst our members through social media. We have it on our website, our internal email lists, and those sorts of things.

● (1130)

Mr. Blake Richards: Okay.

In the last federal election, was your organization registered as a third party?

Ms. Andrea Furlong: I believe we were. I'm new to the organization—I took on the role as executive director only in February—but that is my understanding.

Mr. Blake Richards: In previous elections, would you know whether...?

Ms. Andrea Furlong: I would assume so, but that would be an assumption on my behalf. I'm not entirely sure.

Mr. Blake Richards: Sure. That's just based on the work that your organization does. Obviously, you would see that as election-related, and that's why you think your group would be registered, as far as you know, as a third party.

Ms. Andrea Furlong: I would imagine, yes.

Mr. Blake Richards: Okay.

You mentioned that you do receive some foreign funding specifically for the more international bit of your work. Do you know what would be done to keep that money separate from money that would be used for that work during elections in Canada?

Ms. Andrea Furlong: The Blue Planet Project specifically is registered as a separate entity from the Council of Canadians. We are a third party organization to one another. They have their own board of directors. They operate and also have charitable status in the United States.

Mr. Blake Richards: Is it a deliberate choice of your organization, then, to try to ensure that when you're advocating in Canadian elections, it's done with money that's provided by Canadians? Or is it something that just happens to have happened?

Ms. Andrea Furlong: That's currently how it is.

Mr. Blake Richards: So it's not necessarily a policy where you feel it's important that it only be Canadian money. It just simply happens to be that way.

Ms. Andrea Furlong: No, it's more related to accessing foundation funding. It's something that foundations in the United States are interested in—donating to a section 501(c)(3) charity.

Mr. Blake Richards: I'm just curious, then, what your thoughts are in terms of foreign funds. Obviously, political parties or candidates in Canada can't take donations from foreign individuals. I think that's a good thing, by the way, personally. I imagine you probably would agree with me.

What are your thoughts on third party groups using foreign funds to advocate or engage in activities during our elections? Do you think it's something that is advisable, or do you think we should discourage that?

Ms. Andrea Furlong: I don't know if it's within my expertise, frankly, to comment on that here today. We're here more to speak to the pieces we're speaking about in terms of the court case.

Mr. Blake Richards: Okay. Might I be able to ask if you could have someone in the organization who would maybe be more the right person, I guess, provide that information to us? Could you endeavour to get to this committee the opinion of the organization on that?

Ms. Andrea Furlong: Okay.

Mr. Blake Richards: Maybe it could be in writing or something. Thank you.

I believe I don't have a lot of time left, but, Mr. Pal, maybe I'll just turn to you for the remaining time. You mentioned a couple of areas in the legislation that you were quite pleased with. You mentioned one area, the privacy area, that you weren't as happy about. I know you didn't have a lot of time in your opening remarks. Are there any other areas? Obviously our main goal here is to try to determine what might need to be changed in the legislation.

Are there any other areas that you see in the legislation that you would have concerns with, about which you might have suggestions for ways we could improve?

Prof. Michael Pal: There's one other area, which might seem small, but we have a brief period of time. The standard legal language in the act is mainly about preventing collusion between third parties trying to evade the existing rules, or between a third party and a political party. Collusion is a high legal standard and it's something that is hard to actually prove. The legislation supplied by the Federal Election Commission in the U.S. and the Ontario legislation that came into force in 2017 use what you would call a coordination standard. It actually sets out some activities that are permitted in terms of what can transpire between a political party and a third party, and what activities are deemed not to be permitted.

One of my concerns with Bill C-76 is that it talks about sharing information between a third party and a political party. The other legislative regimes give great detail on what that means. You as a political party might want to say you're having an event at this place and time to discuss this issue. That's sharing information but it's not what we would typically understand to be collusion. In the situation of, say, someone who works for a political party who then goes to work for a third party—and that does sometimes happen—what do we imply from that?

Other legal regimes go into much more detail on what the standard is for collusion or coordination, so that is one area where more could be done. Other than that would be to specify what sharing information means under the act, or to consider moving to a coordination rather than a collusion standard, because it's easier to prove and it perhaps provides more clarity to political parties and candidates and to third parties.

● (1135)

The Chair: Thank you very much.

Now we'll go to Mr. Cullen.

Mr. Nathan Cullen: That's interesting. So right now with Bill C-76 the bar to prove that a third party is essentially using its influence to affect an election is a standard of collusion rather than a standard of coordination?

Prof. Michael Pal: Third parties face a spending limit, so one way you could try to get around that is to divide it into two, three, or 10.

Mr. Nathan Cullen: Yes.

Prof. Michael Pal: Then each one would in theory have the same. That's deemed to be collusion.

Mr. Nathan Cullen: If I'm a Russian billionaire and I spread $500,000 across 20 different groups, they can coordinate efforts on an issue that I care about or attempt to elect somebody I want to elect. Is that a workaround as to how Bill C-76...? Is that a loophole in the bill right now?

Prof. Michael Pal: You can take the Russian billionaire out of the scenario. You can just have Canadian money—

Mr. Nathan Cullen: It's just more interesting that way. Take another scenario; it doesn't matter.

Prof. Michael Pal: I wouldn't say it's a Bill C-76 issue. It's that the Elections Act uses that collusion standard. There are other mechanisms to try to get compliance agreements and things like that, but you don't see a lot of prosecutions and convictions for these, and not a lot of compliance agreements.

Mr. Nathan Cullen: But Bill C-76 could do something about that.

Prof. Michael Pal: It could do something about it by moving—

Mr. Nathan Cullen: That's my question. The government has called this a generational change of our election laws. If we're making a generational change, let's fix the things that exist right now especially with the growing or new threats that have come as we've seen in Brexit and U.S. elections, and whatnot. Would this be one of those changes that you would argue for, to set a bar whereby we will see prosecutions if that's what people are in fact doing? Would that be worthwhile pursuing?

Prof. Michael Pal: I think a coordination type of standard provides more clarity and it's probably also easier to prove in legal terms, so it would be helpful in that sense. The problem is that if you have a rogue foreign actor, there are a bunch of other new offences in the act that get at foreign interference, which I think are very positive. It's just hard to imagine the Russian billionaire ever being held to account under Canadian law.

Mr. Nathan Cullen: No, but the groups that they use need to be held to account.

Prof. Michael Pal: Agreed.

Mr. Nathan Cullen: The billionaire looking to make trouble is not going to come forward to Elections Canada and say, "Oh, by the way, I'm spreading $10 million across the next election to elect this party."

A second question is around the type of sharing of information. It would be one thing if Ms. Furlong's group gathered data on a million Canadians and shared it with a party versus one of her chapter groups saying, "There is a debate tonight on water in Kingston. Please go." Both are sharing information. One has quite an impact, having that kind of data-rich source given to one party over another. Another is inviting to a public forum.

Is there some distinction that needs to be made in this act before it's passed through Parliament, not to crack the walnut with a sledgehammer, but also to be able to get at the thing that we're trying to get at?

Prof. Michael Pal: Collusion is already illegal, so this just adds it into the pre-writ period, and then building into some of the other rules on foreigner interference. Bill C-76 doesn't transform what already exists.

If you do move to a coordination standard, though, you do end up needing to be very specific.

Mr. Nathan Cullen: You'd have to specify.

Prof. Michael Pal: Right, because if you're having a platform launch, you want to be able to invite stakeholders, right?

Mr. Nathan Cullen: Here is the frustrating thing for us, as parliamentarians. We have four days to study and another day to amend a 350-page omnibus election bill over some pretty nuanced things that are incredibly important. Is what I just said fair—that they're important but maybe subtle?

Prof. Michael Pal: Is election law subtle and important? I'll definitely agree with that. It's what I do every day, so I'm biased.

Some hon. members: Oh, oh!

Mr. Nathan Cullen: You're a charter expert.

I'm wondering about freedom of speech limitations that are set out in this bill. There is a restriction on freedom of speech. Is that going to survive a charter challenge? Someone is going to challenge either the pre-writ limitations or the third party limitations on speech. By speech I mean activities.

● (1140)

Prof. Michael Pal: That is a very interesting question.

As a constitutional lawyer, I'd want to see the evidence. I'd want to see the record. It remains to be seen what the record would be into a challenge.

I said in my opening remarks that I would have been constitutionally comfortable with the legislation being even more aggressive and having a longer pre-writ period and more restrictions. I think we're in a different world than we were when the Harper case was decided. Fixed election dates have really transformed the game more dramatically, I think, than many people think.

If you're a third party and you have $5 million to spend, you don't want to waste it. If you're not sure when the election is going to be called, you're nervous that if you plan to spend it at a certain time, it will be irrelevant. With fixed election dates, you can plan that well in advance.

New technologies have transformed things. It's much easier to reach people on Facebook and through other social media platforms. Foreign interference risk is there, and with the way third parties are actually spending money, so there are a bunch of different factors that I think indicate there is a reason for the pre-writ rules, and therefore, it could be a legitimate restriction.

Mr. Nathan Cullen: If you want to get into something specific, do you think Facebook and all those social media platforms should have the same rules apply to them that apply to TV broadcasters in terms of charging and fairness of access to their platform?

Prof. Michael Pal: I'm not an expert on telecommunications law. There are broader implications to face with being a broadcaster but in terms of the way broadcasters are treated for electoral purposes, yes.

Mr. Nathan Cullen: Okay.

Prof. Michael Pal: There are other things that come with that in terms of licensing and Canadian content, so I'm not trying to suggest anything on those issues, but specifically on election advertising, yes, they should be treated like broadcasters.

Mr. Nathan Cullen: Ms. Furlong, I don't know, actually, but I believe or would guess that your organization wants to have greater diversity within our politics, among those who represent us.

Let me put it more specifically. Seventy-five per cent of the House of Commons right now is male. Is the Council of Canadians okay with that ratio?

Ms. Andrea Furlong: They're probably not.

Mr. Nathan Cullen: They're probably not.

The government rejected a bill earlier in this session that would have encouraged parties to run more diversity. There is nothing in this bill to do that, and in fact the government has decided to protect all their incumbent MPs, which, if they're successful in the next election, would ensure that the ratio of 75:25 stays the same post-2019.

What should we do about that?

Ms. Andrea Furlong: I think it's very similar to the remarks I've already made in terms of who gets to participate and who has.... It's about accessibility. As has been mentioned around child care, we have to look at what provides people the opportunity to participate, whether it's child care in making it accessible, or whether it's how we interact with people to become members of political groups or to even be able to be engaged in our electoral system. Right now, the burden is on the people to do that, but my belief is that it's on government to make it accessible for those people to be able to participate.

Mr. Nathan Cullen: It's our responsibility—

Ms. Andrea Furlong: It's the responsibility of the people who have privilege—you folks, me—to create those opportunities, not to turn to those people and say, "Well, that burden is actually on you, so you have to make it happen." Whenever we're assessing something, that's the way we have to look at it: where is the burden placed?

If the burden is placed on people who are already having difficulty participating, whether it's to become a member and run for a political party in an election or to have the right to vote, having that social justice lens makes things a lot more clear. For someone who is de-housed and is having difficulty in their everyday life, the policies we're talking about in any given election have a great impact on them. To say to that person that they have to, in all these different ways that are restrictive, determine their place of residence, and prove that and their identity, is an extraordinary burden on people who are seniors or students. Those are the people who I would imagine you're speaking of when you want to see more diversity in terms of being involved in Parliament.

The Chair: Thank you very much.

Now we'll go to Ms. Sahota.

Ms. Ruby Sahota (Brampton North, Lib.): Thank you.

My first question is for you, Ms. Furlong. Some previous questioning that we had a little while ago almost made it seem like the motive of your organization is somehow sinister and you're taking foreign money for those sinister causes. I just wanted to reiterate that you do not take any money from government or corporations. Is that correct?

● (1145)

Ms. Andrea Furlong: That's correct. On principle, in our over 30-year history, we have never accepted.

Ms. Ruby Sahota: Also, the main motive of your organization when it comes to elections is to mobilize more people to vote, and to make sure that more people have access to voting stations and are able to be heard through the electoral process, correct?

Ms. Andrea Furlong: That's correct.

Ms. Ruby Sahota: In those terms, we talked a bit more about how the voter information cards can increase accessibility, but I'd like to talk a little more about the education component, because I know that's one of the components that caused some concern for your organization as well. You are currently in court fighting the Fair Elections Act, which the Harper government brought in.

I'm sorry you're having to do that, but right now for the government that is the law of Canada and that is what we have to operate under until this new legislation gets passed. I hope that will be soon so that you won't have to proceed. How will this piece of legislation further enhance the ability of the electoral officer to educate people? How is that in line with the mandate of the organization?

Ms. Andrea Furlong: I think that looking at students or young people in general is a really good example of that. What we know, aside from a bump in the last election, is that generally young people are voting less. What we know about education is that it would promote a really strong electorate.

With young people being first-time voters, you want to bring people in when they have their first opportunity to vote. You want to educate them on how, where, and what the process is so that they become voters for their entire lifetime. Bill C-76 would provide for them, as well as for people who haven't engaged in the system, those education pieces about what the changes are. It was very disheartening to see in the current legislation that the Chief Electoral Officer wouldn't be able to do those things to really promote a vibrant democracy in Canada. That's what we want to promote through Bill C-76.

Ms. Ruby Sahota: Why do you think the Chief Electoral Officer is best suited to do that work...or Elections Canada, not just the Chief Electoral Officer, but the department itself?

Ms. Andrea Furlong: Perhaps it's because I'm coming from a non-partisan organization, but I think that's critically important.

We need to have these civil society and government bodies that are non-partisan and seek to invite people to join into a process, not to tell them that they have to vote, but to invite them to vote and invite them into the democratic process. It's something that is a bedrock of our constitutional process, that democratic right to vote, and that's why it should be hosted there.

Ms. Ruby Sahota: In your presentation you spoke about the previous Fair Elections Act being brought in due to concerns of fraud, and that's why they had to act and bring these measures in. You've said that, in study after study, the concern was not about fraud in people going to the polls to vote fraudulently, but in keeping people back and withholding people from voting, such as the robocalls.

I know, Professor Pal, that you've also written a piece regarding the robocalls. What kinds of measures and steps can we take in order to avoid having situations like that occur, and that did actually occur, as we hear, in the Guelph riding, due to Conservatives...? What can we do? That question is for both of you.

Prof. Michael Pal: There are already in the act some provisions related to robocalls. I think the provisions in Bill C-76 that deal with foreign interference and unduly influencing Canadian elections will go some way to reducing opportunities for interference from abroad.

The act is always trying to catch up with new technologies. Robocalls were the new thing, potentially, in the 2011 election. It's still an issue, but I'm not sure that's where we should necessarily focus all our energy. I think potential voter suppression efforts, especially from foreign entities on social media platforms, are concerning. I go to a lot of events around the world on emerging electoral practices, and one of the big things that I keep hearing about is campaigning on WhatsApp.

WhatsApp is a direct messaging system that is famously end-to-end encrypted, so no government can see what is happening. That's one of the reasons why people like it, but it also means that it's very hard to regulate political advertising or campaign finance laws if people are using mass WhatsApp groups to distribute misinformation, say, or voter suppression, or incorrect information about a polling location.

I would suggest that Facebook, WhatsApp, and new platforms that are emerging are where we're going to see the problems that we have to address for 2019 and beyond.

● (1150)

Ms. Ruby Sahota: Okay. Thank you.

Ms. Furlong, do you have anything to add?

Ms. Andrea Furlong: In our constitutional challenge, we've presented an affidavit from Professor Joshua Douglas, of the University of Kentucky College of Law. He is informing us, really, that the in-person fraud is not something that's happening in a way that is being created or is making us think it is happening.... It's more the voter suppression, the chill that's being put on, and how people are being prevented from voting that's the real issue we have to look at. I will provide his documentation to the committee regarding that.

The Chair: Thank you.

Ms. Ruby Sahota: Okay. Thank you.

The Chair: Now we'll go on to Mr. Reid.

Mr. Scott Reid (Lanark—Frontenac—Kingston, CPC): Thank you.

I think I'm only stating the obvious when I say that if you want to provide that documentation to the committee you should do so as soon as possible. The government has a very, very abrupt finish date for this committee to be considering these things. If you can get it to us this week as opposed to next week, you stand a better chance of having it seen by us, particularly as we can't accept testimony and have it circulated to the membership unless it's been translated into both official languages, which imposes a further delay. I'm offering that by way of what's meant to be helpful assistance.

Ms. Andrea Furlong: Thank you.

Mr. Scott Reid: Professor Pal, it's good to have you back. My goodness, we've had you here on electoral boundaries and electoral reform, and we have you here on this. Your testimony is always very interesting and challenging.

I don't know if you'd agree with this, but sometimes I wind up being persuaded the more I think about it, so I'll ask you to start with what is not my central issue. The sale of data by parties has been brought up over and over again by a number of people, including you, as something that is permissible but ought not to be. I assume that this is really mostly simply an accidental result of the fact that the normal rules relating to the use of data don't apply to parties; that is to say, it's not something that's been put in there specifically. It's just there as a happenstance consideration.

I see you nodding. Perhaps you are just trying to understand my question, but here's what I want to ask. Is the danger really that parties will sell the data? After all, as a party, you have to reveal your sources of income, meaning that the secret sale of data is highly unlikely.

Is it not likely or more worrisome that parties will share the data with somebody else and, in particular, that they will share the data with somebody who is going to provide some kind of service to the party, but who is going to manipulate the data in some way to uncover, say, that right now is the right point in a campaign to hit people who have a particular interest in issue X versus issue Y, in whatever method is being used by the parties? That will provide a way in which nuanced data about individuals leaks out. Does that not seem like the greater risk?

Prof. Michael Pal: I have to say that when I read Bill C-76 the fact that the parties were required to have a position at all on the sale of data was quite surprising. I like to think I read pretty widely on what political parties do, and I don't think there was a widespread sense that the sale of data was happening at all.

I think it does really matter in the sense that parties now have a lot of information about voters. We're in a world where that data has real monetary value. I do take very seriously the point that we want to facilitate and encourage conduct between political parties and individuals, so this may mean that whatever the privacy rules are in Bill C-76—or may come in the future—they may be very different from the public sector generally or from the private sector. I think that's appropriate. The trade-off, then, is that parties need to be using that data for political purposes. A part of the rules for registration is that the party has to prove they're actually engaging in political purposes and that they're not actually a commercial entity pretending to engage, pretending to be a political party. There's case law on that.

I viewed the issue as potentially broader than what you've suggested. What did occur to me is that perhaps parties—members of the committee may know better than I do—sell data to provincial or local branches of a party because you may not be able to make a non-monetary contribution, which the giving of a dataset may be. Selling data might be the way to actually comply with provincial rules. That would be one narrow exception where I think it would be entirely appropriate, but then selling to a private entity what's collected under the offices of a public political purpose still does trouble me.

● (1155)

Mr. Scott Reid: Okay.

I want to ask you about this issue. We're in a "different world", you said, with reference to advertising and its potential to persuade. On that basis, you were enthusiastic about—maybe "enthusiastic" is the wrong word—or you were accepting of restrictions being placed on freedom of speech. Essentially, I think the argument you're making is that to better protect our section 3 right to vote we have to put restrictions on our section 2 right to speak freely, to express ourselves freely.

First, I wonder how much meaning these restrictions have in a world in which one can, via things like WhatsApp, simply communicate in a way that is not.... The fact that it even happened is hard to record, the extent to which it happened is difficult to record, and the amount of money that is spent on it is also presumably difficult to capture. There's a basic implementation issue.

Also, I want to ask this question. It seems to me that the real secret of the new media is that you can target your message so that instead of me communicating to you but also having to accidentally communicate to everybody else who is watching the Super Bowl—that's the old model, right?—now that message goes to you, and it goes at a fairly low cost. I wonder to what degree, therefore, these restrictions ultimately will have true meaning.

Prof. Michael Pal: We have highly regulated TV and radio advertising. Many rules that are supposed to apply on social media need to be updated, but they are definitely under-enforced because of the micro-targeting issue, as you suggested. During the Super Bowl, everybody knows the ad happened. It's almost impossible to detect if a political party or an interest group is targeting an ad just at me because it happens to know my consumer or political preferences.

What I take from all that, though, is not to throw our hands up and say, "Let's stop regulating advertising because there are new avenues." We need to make sure that all the avenues are regulated in a way that furthers the level playing field. One practical suggestion that I've tried to make in this debate is that we might need to consider a separate spending limit for social media, because it is cheaper than traditional television advertising. As Mr. Mayrand said, these are new technologies. It's an emerging challenge. It's hard to point at one jurisdiction that's gotten it correct.

That would be one way to try to adjust to the fact that social media ads are so much cheaper, but that might not always be the case, right? I think studying how the Facebook ad auction system worked in the U.S. has revealed large differentials in the amount of money particular campaigns were spending, based on who they were targeting and the content of the ad, because the platform may have an interest in keeping your eyeballs on their platform, which encourages certain kinds of content.

There are a lot of variables in the price of an ad that I don't think we should assume should be constant. We don't always know that Facebook advertising on politics will be a lot cheaper than television advertising, for example. The cost of a print ad in *The Globe and Mail* has gone down pretty dramatically in the last number of years.

The Chair: Thank you very much.

Now we'll go on to Ms. Tassi for our final input.

Ms. Filomena Tassi: Thank you, Mr. Chair.

Professor Pal, I'll ask my first two questions to you. If time permits, I'll direct the rest of the questions to Ms. Furlong.

You spoke about the spending limitations on the pre-writ. You were happy about that. Then you talked about the pre-pre-writ. I'm wondering if you would feel comfortable, based on your expertise in the area of constitutional law, giving us an idea of what you think would be safe in terms of the time of that pre-writ. You're making some suggestion that it should be expanded. Do you feel comfortable giving us a number in terms of the length of time?

● (1200)

Prof. Michael Pal: Now you've put me on the spot.

Ms. Filomena Tassi: Yes.

Prof. Michael Pal: As I said, you always want to see what the record is. The Ontario legislation, which—full disclosure—I was involved in as a legal adviser, has a six-month limit. I think six months, speaking only for myself, is quite a defensible amount of time. The challenge is that there were some B.C. court cases that struck down their provincial pre-writ spending limits partly under the logic that the limits applied while the legislative assembly was in session.

Ms. Filomena Tassi: Okay.

Prof. Michael Pal: You'll know this better than I will, but to me, June 30 looks very clearly to be when the House is traditionally not sitting, so it is taking a small-c conservative approach to try to avoid the critiques that were made of the B.C. legislation. What would the Supreme Court of Canada say to a six-month restriction or a year-long restriction? I think if there were a restriction in every calendar year, that would be seen as draconian, but six months or a year before the election, in a fixed election date, I certainly think could be considered.

You do increase the constitutional risk. There's no way around knowing how the Supreme Court will treat that until we get a record, until we get the cases, but June 30 is certainly less than what Ontario did, for example, and less than what the U.K. does, which is around a year.

Ms. Filomena Tassi: There has been some talk with respect to increasing women in politics, which we're a big supporter of. I'm pleased that on this PROC committee, which is an important committee, two women are part of this committee. In fact, the minister responsible for the file we're talking about is a woman who has given birth to a child and is back in the House, which is absolutely fantastic.

In your remarks, you mentioned originally the importance of the 90% reimbursement for child care expenses. There are many ways in which we can increase the participation of women. I would just like your comments on the importance of what is contained in this legislation, which is the ability for candidates to use personal funds to pay for not only child care expenses but also costs related to a candidate's disability or care of a person with disabilities. Now the eligibility is of increased value, 90% versus 60%, which it was previously.

Prof. Michael Pal: The 90% reimbursement is a very substantial one as compared with some of the other reimbursements. You mentioned the 60% that's in the act. I don't think it will initially be transformative. There are a lot of inequalities in society, and one provision in the Elections Act can't change that, but it certainly provides a really positive incentive to have more women running and to try to decrease any barriers for those with accessibility challenges.

To the extent that the Elections Act can deal with those problems, a 90% reimbursement strikes me as a very practical solution that I think will actually provide really positive incentives on the ground for candidates to run. There are broader factors, as the political science literature tells us, around why people may be reluctant to run that obviously this doesn't and maybe can't address, but I do think it's really positive. I hope it will have a really strong impact on candidates running in the next election.

Ms. Filomena Tassi: Is it your opinion that it will?

Prof. Michael Pal: It's hard to predict. I think it will, certainly in some individual circumstances. We'll have to see what the numbers are. As I said, there are other factors—how the House conducts it business and a broader suite of considerations—but I'm hopeful that it will.

Ms. Filomena Tassi: Thank you.

Is that my time, Mr. Chair?

The Chair: Yes.

Thank you very much. That's very helpful.

We're going to suspend while we have new witnesses set up. Thank you very much for coming.

• _____ (Pause) _____ •

• (1205)

The Chair: Welcome back to the 109th meeting of the Standing Committee on Procedure and House Affairs.

For this meeting's final panel, we are pleased to be joined by James Hicks, national coordinator of the Council of Canadians with Disabilities; Réal Lavergne, president of Fair Vote Canada; and Ryan O'Connor, lawyer and director of Ontario Proud.

Thanks to you all for making yourselves available to us today. We'll begin with Mr. Hicks, to be followed by Mr. Lavergne, and Mr. O'Connor, for opening statements.

Please go ahead with your opening remarks, Mr. Hicks.

Mr. James Hicks (National Coordinator, Council of Canadians with Disabilities): Hi. I'm James Hicks. I'm with the Council of Canadians with Disabilities.

I want to read for you something that was said by the Prime Minister:

> ...I will expect you [as Minister of Democratic Institutions] to...bring forward options to create an independent commissioner to organize political party leaders' debates during future federal election campaigns, with a mandate to improve Canadians' knowledge of the parties, their leaders, and their policy positions.

I bring that up because it's a huge issue for people with disabilities to even participate in the debates. We've spoken to a committee already once on this. I'll go through some of the reasons why that's difficult for folks and through some of the things that need to be done.

The Council of Canadians with Disabilities is a national human rights organization of people with various disabilities working for an accessible and inclusive Canada. CCD is delighted that the Standing Committee on Procedure and House Affairs is conducting a study about appointing an independent commissioner and getting information about televised leaders' debates during federal election campaigns. Leaders' debates are an important component of elections, as they provide the electorate an opportunity to observe the party leaders competing for the job of leading Canada's federal government.

Our interest in this issue is that for too long the electoral process has included barriers that have prevented the full participation of people with various disabilities. Since the 1980s, CCD has been advocating for the reform of the electoral process so that it is accessible to people with disabilities. For example, CCD was an interested party in the Hughes v. Elections Canada case in 2010, which led to Elections Canada's removing of barriers to the participation of people with disabilities in the electoral process. As well, CCD serves on Elections Canada's advisory group for disability issues.

What are the issues here? The bill includes a number of important improvements to the Canada Elections Act that will assist electors with various disabilities to participate more fully in the electoral process.

These include creating a financial incentive for political parties and candidates to accommodate electors with disabilities and facilitate their participation in the democratic process through reimbursement of expenses related to accommodation measures; increasing the reimbursement rate to 90% for expenses in the aforementioned categories and exempting them from campaign spending limits; allowing the Chief Electoral Officer to authorize the use of a voter information card as identification; permitting vouching as a means of identity and residence; making it easier for Canadians to apply for and obtain special ballot kits; reducing the wait times at regular and advance polls by streamlining intake procedures; and increasing the hours of advance polls to 12 hours a day.

They also include better serving remote, isolated, or low-density communities by expanding the use of mobile polls; expanding the option of at-home voting to persons with all types of disabilities; allowing electors with disabilities who are voting by special ballot at a returning office to rely on the same people for assistance as at the polling station, which is currently restricted to an elections officer at the returning office; making it easier for electors with disabilities to apply for a transfer certificate; establishing a register of future electors in which Canadian citizens from 14 to 17 years of age may consent to be included; removing limitations on public education and information activities conducted by the Chief Electoral Officer; and limiting election periods to a maximum of 50 days.

For Canadians with disabilities, leaders' debates have barriers to full and equal participation. That's not just in leaders' debates, but we're focusing on those. Any time that a group of politicians gets together publicly to talk together and put their ideas forward, there are rarely supports in order for people with disabilities to be able to participate.

A full range of disability-related accommodations is necessary to make leaders' debates fully accessible. So that the committee has a better understanding of what we are referring to, we provide some examples: ASL and LSQ interpretation so that deaf Canadians would be able to receive the information in their first language; audio narration of the debate's key visual elements so that persons with vision impairment are aware of the non-verbal communication that takes place during a debate; the use of plain language so that people with psychosocial disabilities can follow the discussion; and closed-captioning so that people who are hard of hearing have access to the debate's information.

● (1210)

Accessibility accommodations would be available in all locations and platforms to ensure participation of citizens with disabilities in the audience, and participation of potential candidates who may have disabilities.

During debates, disability would be addressed in a substantive manner. If questions are introduced in the House, the answer should include responses about persons with disabilities. For example, if questions on violence against women are included in the debate, answers would reference the concerns of women and girls with disabilities and deaf women and girls in a meaningful way.

I'll give you an idea. The rate of violence and sexual assault against women and girls who are deaf and who have disabilities is almost triple what it is for most women. We already know there is a problem in this country with issues around sexuality and women. I think it's important to highlight that it's that much worse for people with disabilities because they can be in a very vulnerable position.

If a question on housing is introduced, it would reference the use of universal design, ensuring that people with disabilities have the same access to these units as any other Canadian would. The best example is the newest information that's coming through with Minister Duclos' housing directives. They're going with the standard certain percentage of accessible units. However, what we know about universal design is that if you use universal design, it can be very quickly modified for any person who needs it. That means you don't have a list of people with disabilities waiting 10 or 15 years to get a unit, as opposed to just being available for the next unit that comes up if their name is at the top of the list.

There are a whole bunch of things we need to consider when we're looking at it. I think those things are just examples. You can then look at what would happen in debates if there is no one to guide and no idea of what is supposed to happen and how people are supposed to do it.

I presented to the all-party meeting about two years ago and it was very clear, when we had a discussion, that making every single debate and every single appearance accessible is not going to happen because politicians don't have the money for that. It then comes back to the government to ask if there is something it needs to do, to step in to make provisions whereby people could actually spend money and not have to claim that as a part of the pot if they're actually addressing accessibility issues.

I don't want to go into too much detail because I know you have other people there, but there are ways we can do that. CCD is more than happy to work with government in order to find ways to actually do that, and to work with the political parties to help them identify where they can get access to information on how to do this.

With regard to the standard that has been set, CCD reminds the committee that the United Nations Convention on the Rights of Persons with Disabilities, which has been ratified by Canada, in article 29 calls for the political rights of people with disabilities to be upheld, including the promotion of an environment in which people with disabilities can participate fully in the conduct of public affairs. Article 29, on participation in political and public life, says that:

> States Parties shall guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others, and shall undertake:
>
> a) To ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others, directly or through freely chosen representatives, including the right and opportunity for persons with disabilities to vote and be elected...
>
> i. Ensuring that voting procedures, facilities and materials are appropriate, accessible and easy to understand and use;

● (1215)

> ii. Protecting the right of persons with disabilities to vote by secret ballot in elections and public referendums without intimidation, and to stand for elections, to effectively hold office and perform all public functions at all levels of government, facilitating the use of assistive and new technologies where appropriate;
>
> iii. Guaranteeing the free expression of the will of persons with disabilities as electors and to this end, where necessary, at their request, allowing assistance in voting by a person of their own choice;
>
> b) To promote actively an environment in which persons with disabilities can effectively and fully participate in the conduct of public affairs, without discrimination and on an equal basis with others, and encourage their participation in public affairs, including:
>
> i. Participation in non-governmental organizations and associations concerned with the public and political life of the country, and in the activities and administration of political parties;
>
> ii. Forming and joining organizations of persons with disabilities to represent persons with disabilities at international, national, regional and local levels.

In addition—

● (1220)

The Chair: We're sort of running out of time here. Are you almost finished?

Mr. James Hicks: Okay.

The Chair: Great. You can mention this when you get asked a question. Don't answer the question, just finish your speech.

Voices: Oh, oh!

The Chair: We'll go on to Mr. Lavergne for some opening comments.

Mr. Réal Lavergne (President, Fair Vote Canada): Thanks very much.

Thank you for inviting me. I see a few familiar faces in the room. I'm happy to be here.

I thought I'd help out by handing out my speaking notes, but I understand that if they are not translated, you're not going to see them for a while. But I would like to point out one thing in particular, which you'll find on page 5. I've actually listed a few items in which we have comments on how the bill might be easily amended, if you were interested in doing that.

I know you are busy. You have a 350-page document in front of you. This would hopefully make it easier. I'm happy to email this to anybody who'd like to see it. Just be in touch with me and I can send you the link. It's a Google doc.

You know what Fair Vote Canada is. I'm not going to go into any detail about that, but as a representative of Fair Vote Canada here—I'm the president—I'd like to address mainly issues of third parties, because there is some new material here and I'd like to express a few thoughts about that, which I think you will find useful.

Before I get into that, I'd like to acknowledge a couple of things with regard to our general issue, which is equal opportunity in the electoral process, levelling the playing field. I'd like, first of all, to acknowledge how much the bill actually does, without going into detail—because you already know what it does—in terms of ensuring greater access for a wide range of specific groups of people, including people with handicaps.

One thing I have to acknowledge, and that we all have to acknowledge, that it does not do—and my colleagues would not forgive me if I didn't mention it—is, of course, anything to ensure that every vote counts equally in terms of effectiveness regardless of where you live and who you vote for. The only way you could get that is with proportional representation, and this act doesn't deal with that. I'm putting it on the table, but I'm not going to harp on it. I know that's not what you want to hear today.

Let's talk about the third party issues. Here I'd like to speak about five different points. The first one is whether Bill C-76 is restrictive enough with regard to third parties. There is one important point to be made on what we in Fair Vote Canada and, I think, many others would think it is not restrictive enough, and that is with regard not to how much third parties can spend, which is fairly generous, and I'm okay with that. We can't spend that much money anyway. We couldn't spend a fraction of what the ceiling is, so it's not a problem for us. However, there is no restriction that I could find on contributions to third parties, so what you have is a system whereby moneyed interests can channel large amounts of money to third parties. They can create more third parties if they want to, and therefore, have a disproportionate influence on the results of elections.

I would like to point you to the B.C. Election Act, which I think is a very good example of restrictions that can be added with regard to third parties. I'm familiar with it because we're working on the referendum there. It restricts contributions to third parties in the same way as it restricts contributions to political parties, with a maximum of $1,200 per individual. I believe there are also restrictions on corporate and union donations as well. I think that is worth looking at. I don't know if you have time to look at it, but I'd like you to put that issue on the table as one that needs to be dealt with in the future.

I am speaking now as a representative of a third party, and I turn to whether the bill is too restrictive in any way. I have four points to make. From my very careful reading of the bill, it is not too restrictive on these two points, but it's not very clear. I'd hate for us, in Fair Vote Canada, to spend hours arguing back and forth on whether it applies to us or does not apply to us, so I have a couple of suggestions on how to make it clearer, assuming that my understanding of what's intended is correct.

First of all, with regard to the pre-election period, third parties have to register if they engage more than $500 in partisan activities, partisan advertising, and election surveys. Never mind election surveys; we don't do a whole lot of those, but maybe that's something we'd have to do. Partisan activities and partisan advertising, the way they're defined here, we do. We are a multi-partisan organization and we focus strictly on the issues, and the bill seems to exclude from consideration advertising that's focused on issues.

It sounds as though we're off the hook, but where it's not clear is whether we can name parties and candidates and the position they have taken when we provide information on our issues.

● (1225)

Does that constitute partisan advertising or is that simply informing the voter? I think it's only informing the voter, and I think the bill is intended to allow naming provided that it's with regard to the issue. That needs to be clarified. It could be clarified with some very simple wording where, when you talk about it with reference to "an issue", it actually says, "otherwise than with reference to an issue". If you're referring specifically to an issue, you can name and you can describe, and that's okay. That needs to be clarified: which is it? That's the first point.

With regard to the "election period", the election period is more demanding. In terms of the election period it says that even when you're dealing with the issues, if you are promoting or opposing a candidate or a party, that counts as election advertising. Fine. I think that makes perfectly good sense.

What we're concerned about here, and I think it could be useful—we ran into this with the Ontario election, where there are similar clauses—is what happens with a general brochure that doesn't promote or oppose any party or candidate but advocates for proportional representation. It's clearly about the issue, but it doesn't promote or oppose. The spirit of the bill seems to be, no, that's not election advertising; that's general advocacy around an issue.

For almost any issue in the country, there's going to be an advocacy organization that works on it. Do we expect every advocacy organization in the country on any issue to register whether they promote or oppose? I think not. If you could be clear about that, it would be really useful. I've proposed that in those "not including" clauses—there are five of them now—you add a clause that refers to business-as-usual advocacy that does not oppose or promote. That's my suggestion on that one. Make it clearer. That will make everybody's lives a lot easier.

The third point has to do with the $500 trigger before a third party has to register. This is nationwide. If we spend more than $500, we have to register. If we spend more than $500 on election advertising, we have to register. Now, that depends on what you consider to be election advertising, hence my two points that I've made and that are important to clarify.

The point is this. For example, in P.E.I. right now, they're discussing Bill 38. Bill 38 is about the referendum. Their trigger for a third party to have to register is $500. They have a population that is about equivalent to that of a riding anywhere else in the country, and here we're talking about a whole country and you want the same threshold of $500. To me, that's way too low. You should be talking about probably at least $5,000, which is 10 times that much. I'd like you to consider that having to register is a huge burden on a third party. We have to hire a financial officer. That's expensive. It's going to be more than $500, I can tell you that; it will be several times that much.

Basically, then, if you say that if we spend more than $500, we have to register, you're basically saying that we're not in the game at all. I think we need to be fair. I think it's going to have to be higher than that. That's worth thinking about.

Finally, there are the new clauses on collusion. There are clauses in the Canada Elections Act—or a clause—on collusion already. The logic of it is obvious. If third parties are working with a political party in order to circumvent limits on election spending, that's against the law. That's collusion.

The existing Canada Elections Act is as clear as day on that. You're not allowed to circumvent limits on spending. You're not allowed as a third party to make in-kind contributions. If you own a storefront, you're not allowed to just lend it to a party. That's obvious. It's included already in the Canada Elections Act. However, for an advocacy organization like ours, Fair Vote Canada, we have to work with politicians or we are never going to get electoral reform in this country.

● (1230)

If we are not allowed to talk to politicians to find out what they're prepared to do if they're elected.... Are they prepared to take some leadership on proportional representation? If they are, we might want to consider endorsing them and supporting them. We need to talk to them to do that, just as politicians need to talk to voters. They're prepared to tell voters what they're prepared to do and not do, and voters are prepared to push back. There has to be that kind of dialogue with third parties as well, without circumventing the electoral spending limitations.

I think, and my colleagues in Fair Vote Canada think, that the new clauses on collusion are over the top. They should simply be struck out. They're not necessary. They are handicapping third parties from doing what they need to do, which is to be part of the political process and to talk with politicians to see where alliances can be forged in order to pursue our reform agenda.

Thank you very much. You have the notes. As I said, if you need them more quickly, just contact me. There is a summary. There are proposed amendments. The definitions I was talking about are included at the back. I think you'll find this useful.

Thanks very much.

The Chair: Thank you very much.

Now we'll go on to Mr. O'Connor.

Mr. Ryan O'Connor (Lawyer and Director, Ontario Proud): Thank you, Mr. Chair, and thank you to the committee members for inviting me here today.

My name is Ryan O'Connor. I'm the lawyer for and director of Ontario Proud, which is a registered third party political advertiser in the province of Ontario for the current provincial election. We're a social media-based political advocacy group. We're not-for-profit. We promote ethics and accountability in government, fair taxes, personal freedom, and Ontario culture. We started in February 2016 as just simply a Facebook page, and have grown to over 400,000 supporters on the web. Millions in Ontario and throughout Canada view our content online, to the point where Ontario Proud is one of the most engaged and popular Facebook pages in Canada and is the most engaged and popular Facebook page in the province of Ontario.

Since November 9 of last year, Ontario Proud has been registered as a third party political advertiser in Ontario. That was the first day we were required to do so under that province's Election Finances Act. We've advertised on television, but we've largely focused our efforts on non-traditional fora for political advertising, including YouTube, Facebook, and Instagram, in order to maximize our reach in the most efficient manner possible while remaining compliant with the very strict spending and disclosure requirements of the Ontario Election Finances Act. We receive support from donors throughout the province of Ontario. We also comply with the legislation by not accepting contributions for advertising expenses from anyone outside of Ontario.

The legislation on election procedure and campaign finance is arguably some of the most important legislation that Parliament enacts. It sets the ground rules for the exercise of our constitutional right to a free and fair franchise and sets the ground rules for those who participate in the electoral process. Because such legislation is so important, Parliament must carefully and properly consider any changes to the conduct of Canadian elections. This is especially so with Bill C-76 as proposed. Neither this committee nor the House and Senate should expedite the passage of this legislation before the House rises in the summer if it cannot give due consideration to the serious infirmities contained in the legislation as proposed. These infirmities, if not rectified, will have as their result the opposite effect of what the legislation intends and will work to stifle political discourse, discourage third parties from participating in issue advocacy, and perhaps more alarmingly, cause them to ignore the requirements of the legislation altogether.

I will focus my remarks on two primary areas of concern. First, the onerous registration rules, compliance costs, and spending limits outside of elections in relation to third parties are likely unconstitutional. Secondarily, the attempts at limiting the foreign funding of political advocacy will have no measurable impact on the foreign influence that has occurred previously in the Canadian political discourse.

With respect to the constitutional concerns, the legislation as proposed will, for the first time, impose spending limits and registration and donor disclosure requirements on third parties outside of election periods and for a specified pre-election period that commences on June 30 of a fixed-date election year. The legislation goes further than most regimes in the country insofar as it will not only regulate third party political adverting spending; it will also regulate "partisan activity expenses" and "election survey expenses". The former specifically refers to, in the draft legislation, holding rallies, canvassing, and encouraging electors to vote.

Furthermore, the proposed legislation purports to expand the government's role in policing election advertising, partisan activity, and survey spending even before the pre-election period by requiring third parties, after registering with Elections Canada once incurring expenses, to file an interim return if the third party has received contributions or incurred expenses for regulated activity of $10,000 or more from the time of the preceding election until the time of registration.

The leading Supreme Court of Canada case, which I'm sure many members of this committee are familiar with, is the 2004 case of Harper v. Canada. In that case, the majority of the court found that although the third party spending limits that currently exist in the Canada Elections Act violated paragraph 2(b) of the charter, which is the right to free expression, those were justified, under section 1 of the charter, as reasonable. However, it's critical to note that the spending limits, which remain in the legislation but are indexed to inflation, are only applied during the writ period and only applied to advertising spending. The majority of the court in Harper v. Canada found that the limited time period within which these limits applied was minimally impairing of the right to free expression and proportionate to the objective of promoting electoral fairness. In disagreeing with the minority's position, in that case, that spending limits meant that—to quote from the decision—"citizens cannot effectively communicate their views on election issues", the majority said that "this ignores the fact that third party advertising is not restricted prior to the commencement" of the campaign period.

More recently, the B.C. Court of Appeal found in a 2012 case, the Reference re Election Act (BC), that the proposed third party advertising spending restrictions on a 40-day period prior to the writ period violated the charter right to free expression and was not justified under section 1 of the charter. Part of the rationale of the court in that decision was that the B.C. government had advanced no evidence that restrictions on third party advocacy had the benefit of ensuring electoral fairness outside of a period when electors would actually be voting.

● (1235)

Currently in Ontario there is a coalition of trade unions that has initiated a constitutional challenge to the third party spending restrictions of the Election Finances Act. A constitutional challenge is inevitable, I would say with all due respect, if the legislation as drafted passes in its current form.

When organizations regularly participate in the political discourse in this country and are forced to comply with onerous regulatory requirements such as those proposed in the legislation, they may simply refuse to do so. They will do so in two ways. They will either ignore the legislation—which in any event is impossible to police in an era of digital campaigning—like many third parties are currently doing in Ontario, or they'll simply not participate in the democratic discourse. Parliament shouldn't be prioritizing the political expression of candidates and parties at the expense of ordinary citizens.

Parliamentarians also need to consider how Bill C-76 will affect issue advocacy. Any trade union that publicly advocates on labour legislation outside of a pre-election period will now have to account for its spending on that issue to Elections Canada. An environmental advocacy group that wishes to organize a rally related to forestry development would have to do the same. Also, a small citizens advocacy group that supports lower taxes will simply stop participating in the public discussion of issues, both during the pre-election period and during the writ period, because it is afraid of running afoul of the legislation or cannot afford the significant compliance laws that Mr. Lavergne had alluded to. This is hardly the intent of the proposed legislation, but that's going to be its effect, and its effect is an unconstitutional one.

I want to turn now briefly to foreign finance loopholes that exist in our current electoral financing legislation. Foreign influence in elections has been a concern in western democracies over the last half a decade, although that may be putting it mildly. One of the most common examples cited is the previous presidential election in the United States. Canada has not been immune to foreign influence in our elections. Foreign-funded groups have bragged about funding third party campaigns against parliamentarians, most recently in the 2015 federal election. Senators—notably, Senator Frum—have been encouraging Parliament to close any loopholes that allow foreign financial influence in our elections.

The proposed legislation before you prevents foreign entities from financing third parties for their advertising efforts or their partisan activity; however, it only does so during the pre-election period and the writ period. It doesn't specifically prohibit financial support for third parties outside of these periods. It would still be legal for foreign foundations, governments, corporations, and trade unions to financially support third parties.

Going further, it would allow third parties to avoid the disclosure requirements of the act altogether if they simply chose not to register during an election period. If members of this committee really wish to address the mischief of foreign involvement in Canadian politics, it would do well to completely close this loophole and either ban or heavily restrict foreign involvement in our electoral system at all times, not just between June 30 and election day.

The government that proposed this legislation often refers to itself as the party of the charter. If it truly wishes to live up to that mantle, it would support amending the proposed legislation, limit any domestic third party spending requirements to the writ period, and defend the right to free expression instead of causing its suppression.

Thank you.

The Chair: Thank you very much.

We'll go to Mr. Simms for the first round.

Mr. Scott Simms: Thank you, Chair, and thank you, guests, for joining us. I'm going to start with the person I've met many times before.

Mr. Lavergne, it's good to see you again. I hope all is well. I want to thank you for your input here today as I know it has been through discourse, no matter what the issue is, on our elections.

You've talked about clarification, in many cases, on how you communicate. In your case, it's about naming parties or candidates, or who it is you're supporting in particular, and how that gets caught in this particular act. I'd also like to say that it's also the people who you do not want to vote for that should be clarified as well, because in going through the procedure of democracy I guess in many cases we tend to eliminate options before we get to the one that we're voting for. Also, on advocacy for promoting a specific party or the stand they take, I understand that as well.

The only issue I have is with the registration of a third party. You mentioned that you'd rather see it go from $500 to, say, $5,000. I want to give you an example of why I'm not sure I agree with that. If you take a province like mine, which has seven members of Parliament in total, if there were an advocacy group for, say, the separation of the island—float our way to the EU and have at it—they could actually mount a substantial campaign, but it's very focused. I only fear that if you have a larger number to start with, it wouldn't eliminate those local campaigns that may make a difference. They won't have to be registered as a third party. I'll let you comment on that.

● (1240)

Mr. Réal Lavergne: My comment on that is that normally when you have these kinds of restrictions, you'd have restrictions at the riding level and also at the national level. You wouldn't have a $5,000 limit if it were focused on one riding. It could be $500 for one riding or it could be $1,000 for one riding. I think that would help address that issue.

Mr. Scott Simms: I'm more concerned about the regional aspect, as I said, for smaller provinces for any particular issues that bubble up. We tend to have different issues in different areas. That's my only concern with that. I'll just leave it at that, but I do appreciate what you're saying.

Mr. Hicks, there's a lot of language in here that addresses the issue of those with disabilities. I can honestly say, as someone who is a rural member of Parliament, it seems—in fact, it doesn't just seem to be a problem; it is—the problems for a lot of people with disabilities become magnified. They increase as we have to travel over greater distances. That is not to detract from anybody living in an urban area—don't get me wrong—with a disability, but it has become quite a challenge for us to accommodate. When it comes to the franchise of voting, it's so easy for many people to just give up and say, "Meh, I'm not going to bother." In my riding that happens quite a bit because of the distances we travel, and even more so when it comes to the disabilities part of it.

Now, this is from a voter's perspective. Assuming it will pass, what in this, that you think is long overdue, is something that needs to be accentuated and publicized once this bill is passed?

Mr. James Hicks: Sorry, I'm not quite sure I heard exactly what you were asking for.

Mr. Scott Simms: What I'm asking for is that within Bill C-76 itself, what part of the disabilities section, the access to voting, is key to you?

Mr. James Hicks: I don't know that there's a lot in here that will deal with access. That's been part of the problem. If you're looking at, in general, what needs to happen around access and what the bill should have included, I guess what we would support is that it identify that the money used around things, around different political activities that actually bring people into the public realm—whether they be debates or whatever—not have a limit on it that is included in the ceiling. Not having the supports for people with disabilities as part of that amount would then allow the parties not to use up that money, so they could use it for other things.

Mr. Scott Simms: If I may say so, having been a candidate in five elections now, one thing that I think will be effective is that vouching is going to become.... A lot of people with disabilities lack certain identification required for voting. It was an experience for us as campaigners, especially in rural areas...and the reintroduction of the vouching element is going to be of great benefit.

Let me go back to candidates for a moment. It's one thing to vote, but another to run. To run in an election, for those with disabilities, certainly is of benefit as well.

For people who are campaigning, there are provisions in here that help them when it comes to the reimbursement of their election expenses. Would you care to comment on that?

● (1245)

Mr. James Hicks: If I'm understanding correctly, you're talking about people with disabilities who are running and looking at the supports they would need to move forward.

Mr. Scott Simms: Yes.

Mr. James Hicks: I think you need to understand what the signing of the UN Convention on the Rights of Persons with Disabilities actually identifies in political activity and other things, and make sure that Canada is following those guidelines. Those guidelines have been very, very clear. Canada has signed on to that convention, so there's no reason it wouldn't use those guidelines around political activity and how people with disabilities can be involved in political activity. I would refer you to that document. Look at that.

Mr. Scott Simms: I will do that. Thank you.

Mr. James Hicks: Use that as a guide for how you would deal with those things.

Mr. Scott Simms: Thank you, Mr. Hicks.

Is there anything from the end of your opening speech you'd like to add that you did not get a chance to add?

Mr. James Hicks: No, I think it's okay. I would probably just have reinforced that if parties continue to have to spend money to ensure accessibility and they're spending it out of their own money, they're not going to agree to that and it's going to raise the bar up high as to how much they're spending. If there were a pot of money available for politicians when they're doing a public event—or for politicians at public events with more than one politician—they might actually have access to funds that could help them ensure accessibility for people with disabilities.

The Chair: Thank you very much.

Now we'll go to Mr. Richards.

Mr. Blake Richards: Thanks, Mr. Chair.

I have lots of questions, but we'll get to what we can here. I'll start with Mr. Lavergne from Fair Vote Canada.

Just give a real quick response to this first question, if you could, because I have stuff here I'd like to go through. I think in your opening remarks, if I understood it correctly, you were advocating for contribution limits for contributions to third parties. Were you advocating for those being identical to those for political parties? Was that the intention of what you were stating?

Mr. Réal Lavergne: Not exactly. I was pointing out that's how they've done it in B.C. You have to figure out how to arrive at a figure. I don't really have a strong opinion to voice on that. We're not looking for, certainly, more than for political parties.

Mr. Blake Richards: Okay, so you were advocating for contribution limits and you mentioned B.C. You're saying it should be either the same or less than what it is for political parties, is that what I heard?

Mr. Réal Lavergne: Without my having thought it through a lot.... I notice that Ryan wants to speak on that issue. I'll let him, if he'd like to add something.

Mr. Blake Richards: Sure. Make it real brief if you do have something you'd like to add.

Mr. Ryan O'Connor: Thank you for ceding the floor, Mr. Lavergne. I appreciate it.

Just very briefly on that issue, I think there would be constitutional problems with preventing, for example, a trade union, which engages in political advocacy—frankly, all the time—on behalf of its members, from contributing to a third party when it is itself a third party. It would be hugely problematic from a constitutional perspective. You're effectively preventing them from participating in political discourse.

Mr. Blake Richards: Okay, so you're giving the counterpoint to Mr. Lavergne.

In terms of foreign funding of third party groups, let me ask, first of all, does Fair Vote Canada receive any foreign funding?

Mr. Réal Lavergne: No, not at all.

Mr. Blake Richards: Okay.

What would your position be on restricting or eliminating foreign funding of third party groups that participate in elections? What would your position be?

Mr. Réal Lavergne: Beyond what's already in the bill...?

Mr. Blake Richards: Certainly what's in the bill prevents the contributions from being received during the election—

Mr. Réal Lavergne: During the pre-election.

Mr. Blake Richards: —but not during the period prior to June 30, so for almost the entire election cycle, no, it doesn't prevent that. Would you argue that we should prevent it completely, or just have it be a name, as this does?

Mr. Réal Lavergne: Again, I don't have a really strong opinion on that. I would tend to see it as being restrictive. My reading of the bill is that it excluded it for both the pre-election period and the writ period.

Mr. Blake Richards: The pre-election period means the period from June 30 until the call of the election, not for anything prior to that.

Mr. Réal Lavergne: Yes.

● (1250)

Mr. Blake Richards: Obviously, what that does is that it tells anyone that if they want to contribute and they have foreign funds, to make sure they do it on June 29 or earlier. Everyone knows there's a fixed election date, so I don't think it really prevents anything.

Anyway, since you didn't really have much on that in terms of thoughts, let's move on. You had mentioned the fact that your group, for example, does issue advertising. You want some clarification about being able to name or not name political parties.

I guess I just want to run this scenario by you to see if you think it is something that should be permitted or not permitted. An example would be that an organization would indicate that candidate X wants to do Y. That Y just happens to correspond almost exactly with the messaging of a political party, so their messaging on a certain issue. The messages are very well-aligned. It wouldn't actually directly oppose or promote a specific party or candidate, but what it's doing, in effect, by naming them and also aligning with the messaging of a party, is that it would obviously give some disadvantage to the person being named or the candidate of the party being named, and give some advantage to the other entity.

Would you think it advisable that our legislation, any legislation, would try to prevent those kinds of things from occurring?

Mr. Réal Lavergne: Yes, and it does. If you look at the election period, any campaigning around an issue that names, that promotes or opposes—which is defined as "naming"—counts as election advertising, so there are restrictions on it. You have to register if you do that, at more than $500.

Mr. Blake Richards: No, I understood that, but I understood you to be advocating that you didn't think that should occur. That's why I brought up this scenario.

Mr. Réal Lavergne: What I was saying is that under the pre-election period it's worded very carefully, differently, and it's saying that issue-based advertising wouldn't count. The question is, then, if in your issue-based advertising—which in our case would be proportional representation—you say party X is supportive of proportional representation, does that all of a sudden make it partisan advertising? The bill seems to say no, it doesn't, but it's not entirely clear. I don't want to be arguing about it afterwards.

Mr. Blake Richards: Sure. I understand now what you were getting at. You're pointing out an inconsistency between the writ period and the pre-election period. That's something that we obviously need to look at, and there needs to be some kind of an amendment. Whatever it is that we choose to do, there needs to be an amendment to clarify that. That's what you're pointing at.

Mr. Réal Lavergne: If it's intentional, then make it clear. If it's not intentional, make that clear, too. Right now it's not clear.

Mr. Blake Richards: I've got it. That's obviously something, because we're trying to rush this bill, that we could potentially miss, so I appreciate your pointing that out. That's something we need to take a look at to figure out how we need to amend it. Thank you.

I'm going to turn to Mr. O'Connor from Ontario Proud.

Ontario obviously made some changes to its third party regime. One of the things I'll point out as an example is that there were some anti-collusion measures enacted, I think. What can we learn from the experience of this Ontario election, or is it too early to be able to tell? If your argument is that it's too early to be able to tell, then would you argue that we should make sure we do take the time necessary to hear from other groups that are involved, like you, and from Elections Ontario probably, to make sure that we are learning from that experience?

Hopefully that's clear. I just tried to put it all together because we have limited time.

Mr. Ryan O'Connor: We're concerned that the collusion provisions of the Election Finances Act in Ontario are not being upheld by Elections Ontario. I've personally identified several instances of collusion between unregistered third parties and political parties or simply with unregistered third party groups that frankly just never bothered to register yet are engaged in issue advocacy and third party political advertising in excess of the limit under the act, which would then require them to be registered. There is one in particular that appears to be colluding with a registered third party. The collusion provisions are something that this committee and Parliament really need to take a look at to ensure not only that they exist but also that they are enforceable and are enforced.

Mr. Blake Richards: Would the legislation before us address these concerns that you have, and if not, what do we need to do to fix it?

Mr. Ryan O'Connor: The concern is that it needs to be enforceable. It's one thing to have an anti-collusion provision between a party and a third party or two third parties, etc., but it needs to be enforceable.

We're seeing in Ontario right now unregistered third parties that are just not registering. There are unregistered third parties that are colluding with one of the registered third parties and they're doing it blatantly and obviously because Elections Ontario's compliance mechanism is responsive and not proactive. Elections Ontario will only respond to a complaint.

There are several complaints in the system right now that are not going to be addressed before the election on Thursday, so the electoral process may have been tainted by inappropriate collusion. If that's found to be the case, Elections Canada will have to be very proactive and it needs to be empowered to do so.

I can't emphasize enough the importance of the anti-collusion provisions. They could be worked on, certainly, in this legislation, but parliamentarians need to be cautious about rushing it through. Collusion is going to be an issue. As soon as you impose a spending cap on a third party, there is a concern that a third party will just break itself up, collude with individuals of a similar mind and similar interests, and if we're not enforcing the anti-collusion provisions, then the spending limits become meaningless. They're something that parliamentarians really need to focus on, and I think a lot more time needs to be spent being concerned with them.

● (1255)

The Chair: Thank you very much.

Our last intervenor is Mr. Stetski.

Mr. Wayne Stetski (Kootenay—Columbia, NDP): Thank you for being here today.

I'll start with you, Mr. Lavergne, and I just want to congratulate you on the great people you have working for Fair Vote in my riding of Kootenay—Columbia. They do excellent work. Thank you for mentioning proportional representation, which of course is still high up on our list.

You mentioned you had a number of proposed amendments in your paper. I'm wondering if you would like to highlight just the top two, because I do have questions for the other gentlemen as well.

Mr. Réal Lavergne: I think the easiest ones would be the clarification of what constitutes election advertising and what constitutes partisan advertising, those two cases.

If you want, when I step out, I can give you this and you can have a look at it or pass it around to others if you like.

Mr. Wayne Stetski: That would be great.

Mr. O'Connor, you mentioned trying to close some of the loopholes related to foreign influence and third party funding. Do you have examples of legislation that you think does this, which you could share with the committee?

Mr. Ryan O'Connor: I don't have any specific examples. I think every country's experience with this is going to be different.

What I would suggest, based on my reading of the draft legislation, is that a simple solution is to expand the prohibition on foreign financing of elections to all time periods. To use an example, the legislation with respect to third party election expenses in advertising actually creates a period between the preceding election and the date of registration during the pre-writ period in which it has to register incurred expenses or received contributions of $10,000.

We know that Parliament is empowered to regulate this. Certainly I think it's very important that Parliament do that, and I think the simple solution—without citing the international experience—is to extend the prohibition on foreign financing by third parties or anyone else participating in the process that is regulated under this legislation from the time of the last election until the pre-writ period.

Mr. Wayne Stetski: Thank you.

Mr. Hicks, thank you for being there for Canadians with disabilities. It's very much appreciated. I know that everyone around the table here has a real interest in that.

Debates in particular, though, are quite challenging. In my riding of Kootenay—Columbia, in 2015 we had 12 community debates and three school debates. I'm wondering whether you could give us some idea of what would be the most practical recommendations to help people with disabilities, when it comes to debates. These are small rural communities. You're doing them in halls. You're doing them in gymnasiums. I'm really interested in how we can be most helpful.

Mr. James Hicks: There are a few things that may help. We just went across the country to do consultations with Canadians about what should be in the disability act. We used what's called CART services—captioning in real time—which allows people to read along with what's being done. It's up on a screen. They can do it from remote locations, and into remote locations. We used it while we were in Whitehorse and in Yellowknife, and in other places that have less access to those sorts of things.

The biggest thing is to work with parties to identify what supports are necessary. You may need to have different things, depending on who's coming. For instance, we don't always use CART services. We'll ask people to identify what their needs are ahead of time. You could take that approach. You put out a notice that there's going to be this meeting and if you want to attend you need to let us know ahead of time what your needs are. That way you're not spending money that's not going to be used.

We do. We end up spending money that, sometimes, because we wouldn't have an event without ASL and LSQ.... There may not be anybody who uses LSQ, which is a French sign language, but it's still there if somebody shows up. From our perspective, being a disability organization, we need that.

There are probably ways in which you could identify when these events are going to occur, and say that if someone needs support they need to let you know ahead of time. You're not necessarily having to do it every single time, but you could put some onus on people who want to come out that they need to let you know what their support needs are.

Then the other part is to make sure that's not included in the amount. The costs are not little. They can rise quickly. That's why we're suggesting that they not be a part of the general amount that parties are allowed to spend, but make it a provision that they can do those things and that won't go into the total of what they can spend.

● (1300)

Mr. Wayne Stetski: Are you suggesting that this be a budget available to politicians or through Elections Canada, to ensure that there's more access to debates?

Mr. James Hicks: It's a good question. I don't have an answer for that right now. I'd like to think about that a bit. I sit on the committee for Elections Canada. I wouldn't mind talking to a couple of my colleagues on that committee about their ideas on that and how they think that could best work.

Mr. Wayne Stetski: Okay. Thank you.

The Chair: Thank you very much.

Thank you to our witnesses. It's been very interesting and helpful, with new perspectives from all views. We really appreciate that. Thanks a lot.

Just for the committee members, I've been taking the liberty of adjusting the witness list as people request, as people can't, and...but there are two I want to ask the committee about. One is that the commissioner of elections would like to either be a witness or submit a brief. I think that makes a lot of sense. Is that okay? Another request is from Angela Nagy, who was the CEO and then the financial agent of the Kelowna federal Green Party during the 2015 election.

Okay, so we'll add them.

We agreed first thing this morning that we'll reschedule those witnesses we couldn't get this afternoon, if we're voting all afternoon.

Mr. Clerk, do we need anything else?

Mr. Blake Richards: Do we have any sense of where we're at in terms of lining up the schedule for tomorrow?

The Clerk of the Committee (Mr. Andrew Lauzon): I don't have a full picture right now, because there are people back at the office currently taking in the confirmations as they come in. I wouldn't be able to say definitively, but I'm confident that we'll have a slate of witnesses for both meetings tomorrow.

Mr. Scott Reid: Would you be able to notify us about that before the end of business hours today?

The Clerk: For sure. Our plan is to put out a notice of meeting for both the morning and the afternoon session before the end of the business day.

Mr. Scott Reid: Thank you very much.

The Chair: All right. Thank you.

The meeting is adjourned.

Published under the authority of the Speaker of the House of Commons

SPEAKER'S PERMISSION

The proceedings of the House of Commons and its Committees are hereby made available to provide greater public access. The parliamentary privilege of the House of Commons to control the publication and broadcast of the proceedings of the House of Commons and its Committees is nonetheless reserved. All copyrights therein are also reserved.

Reproduction of the proceedings of the House of Commons and its Committees, in whole or in part and in any medium, is hereby permitted provided that the reproduction is accurate and is not presented as official. This permission does not extend to reproduction, distribution or use for commercial purpose of financial gain. Reproduction or use outside this permission or without authorization may be treated as copyright infringement in accordance with the *Copyright Act*. Authorization may be obtained on written application to the Office of the Speaker of the House of Commons.

Reproduction in accordance with this permission does not constitute publication under the authority of the House of Commons. The absolute privilege that applies to the proceedings of the House of Commons does not extend to these permitted reproductions. Where a reproduction includes briefs to a Committee of the House of Commons, authorization for reproduction may be required from the authors in accordance with the *Copyright Act*.

Nothing in this permission abrogates or derogates from the privileges, powers, immunities and rights of the House of Commons and its Committees. For greater certainty, this permission does not affect the prohibition against impeaching or questioning the proceedings of the House of Commons in courts or otherwise. The House of Commons retains the right and privilege to find users in contempt of Parliament if a reproduction or use is not in accordance with this permission.

Also available on the House of Commons website at the following address: http://www.ourcommons.ca

Publié en conformité de l'autorité du Président de la Chambre des communes

PERMISSION DU PRÉSIDENT

Les délibérations de la Chambre des communes et de ses comités sont mises à la disposition du public pour mieux le renseigner. La Chambre conserve néanmoins son privilège parlementaire de contrôler la publication et la diffusion des délibérations et elle possède tous les droits d'auteur sur celles-ci.

Il est permis de reproduire les délibérations de la Chambre et de ses comités, en tout ou en partie, sur n'importe quel support, pourvu que la reproduction soit exacte et qu'elle ne soit pas présentée comme version officielle. Il n'est toutefois pas permis de reproduire, de distribuer ou d'utiliser les délibérations à des fins commerciales visant la réalisation d'un profit financier. Toute reproduction ou utilisation non permise ou non formellement autorisée peut être considérée comme une violation du droit d'auteur aux termes de la *Loi sur le droit d'auteur*. Une autorisation formelle peut être obtenue sur présentation d'une demande écrite au Bureau du Président de la Chambre.

La reproduction conforme à la présente permission ne constitue pas une publication sous l'autorité de la Chambre. Le privilège absolu qui s'applique aux délibérations de la Chambre ne s'étend pas aux reproductions permises. Lorsqu'une reproduction comprend des mémoires présentés à un comité de la Chambre, il peut être nécessaire d'obtenir de leurs auteurs l'autorisation de les reproduire, conformément à la *Loi sur le droit d'auteur*.

La présente permission ne porte pas atteinte aux privilèges, pouvoirs, immunités et droits de la Chambre et de ses comités. Il est entendu que cette permission ne touche pas l'interdiction de contester ou de mettre en cause les délibérations de la Chambre devant les tribunaux ou autrement. La Chambre conserve le droit et le privilège de déclarer l'utilisateur coupable d'outrage au Parlement lorsque la reproduction ou l'utilisation n'est pas conforme à la présente permission.

Aussi disponible sur le site Web de la Chambre des communes à l'adresse suivante : http://www.noscommunes.ca